Question 15 - Real Property - Rights in Land

The question was:

A man owned Goldacre, a tract of land, in fee simple. At a time when Goldacre was in the adverse possession of a stranger, the man's neighbor obtained the oral permission of the man to use as a road or driveway a portion of Goldacre to reach adjoining land, Twin Pines, which the neighbor owned in fee simple. Thereafter, during all times relevant to this problem, the neighbor used this road across Goldacre regularly for ingress and egress between Twin Pines and a public highway.

The stranger quit possession of Goldacre before acquiring title by adverse possession. Without any further communication between the man and the neighbor, the neighbor continued to use the road for a total period, from the time he first began to use it, sufficient to acquire an easement by prescription. The man then blocked the road and refused to permit its continued use. The neighbor brought suit to determine his right to continue use of the road. The neighbor should

A: win, because his use was adverse to the stranger's and once adverse it continued adverse until some affirmative showing of a change.
B: win, because the neighbor made no attempt to renew permission after the stranger quit possession of Goldacre.
C: lose, because his use was with permission.
D: lose, because there is no evidence that he continued adverse use for the required period after the stranger quit possession.

The explanation for the answer is:

Answer C is correct. The neighbor had the man's express permission to use the road, so that use was never adverse. The neighbor incorrectly argues that he has acquired an easement by prescription. To establish an easement by prescription, a party must show: 1) adverse, 2) continuous, 3) visible, and 4) unpermitted use of the area for the length of the statutory time period. Although the neighbor's use was continuous, visible, and lasted for the length of the statutory time period, that use was not adverse or unpermitted. Answer A is incorrect because the use must be adverse to the owner of the property. Answer B is incorrect because the man's original grant of permission was sufficient, and did not need to be renewed because the stranger never acquired title by adverse possession. Answer D is incorrect because despite the stranger's adverse possession, the neighbor's use was never adverse due to the owner's permission.

Question 16 - Real Property - Ownership

The question was:

A brother and a sister acquired as joint tenants a twenty-acre parcel of land called Greenacre. They contributed equally to the purchase price. Several years later, the brother proposed that they build an apartment development on Greenacre. The sister rejected the proposal but orally agreed that the brother could go ahead on his own on the northerly half of Greenacre and she could do what she wished with the southerly half of Greenacre. The brother proceeded to build an apartment development on, and generally developed and improved, the northerly ten acres of Greenacre. The sister orally permitted the southerly ten acres of Greenacre to be used by the Audubon Society as a nature preserve. The brother died, leaving his entire estate to his son. The will named the sister as executrix of his will, but she refused to serve.

In an appropriate action to determine the respective interests of the sister and the brother's son in Greenacre, if the son is adjudged to be the owner of the northerly ten acres of Greenacre, the most likely reason for the judgment will be that

A: the close blood relationship between the brother and sister removes the necessity to comply with the Statute of Frauds.
B: the sister's conduct during the brother's lifetime estops her from asserting title to the northerly half of Greenacre.
C: the joint tenancy was terminated by the oral agreement of the brother and the sister at the time it was made.
D: the sister had a fiduciary obligation to her nephew by reason of her being named executrix of the brother's will.

The explanation for the answer is:

Answer B is correct. The brother and sister held the property in joint tenancy. A joint tenancy cannot be created without the "four unities" (time, title, possession and interest), and can be terminated in one of two ways: by partition or by severance. Where one joint tenant makes an inter vivos conveyance of their interest in the property, a severance occurs and the interest transferred is that of a tenant in common. Similarly, where one joint tenant executes a mortgage, a severance may also occur. In this case, although there was no conveyance or mortgage, it appears that the sister may still have lost her rights in Greenacre. She agreed to allow her brother to do as he wished with the northern half of the property, declared that she would do the same on the southern half, and proceeded to voluntarily relinquish possession of the lower half to a conservation society. If the brother's son prevails, it will be because the sister's actions estop her from asserting title.

Answer A is incorrect because the Statute of Frauds is unaffected by familial relationships. Answer C is incorrect because the oral agreement did not necessarily constitute a conveyance. Answer D is incorrect because the sister cannot be forced to assume a duty and serve as executrix.

Question 17 - Real Property - Ownership

The question was:

A brother and sister acquired as joint tenants a twenty-acre parcel of land called Greenacre. They contributed equally to the purchase price. Several years later, the brother proposed that they build an apartment development on Greenacre. The sister rejected the proposal but orally agreed that the brother could go ahead on his own on the northerly half of Greenacre and she could do what she wished with the southerly half of Greenacre. The brother proceeded to build an apartment development on, and generally developed and improved, the northerly ten acres of Greenacre. The sister orally permitted the southerly ten acres of Greenacre to be used by the Audubon Society as a nature preserve. The brother died, leaving his entire estate to his son. The will named the sister as executrix of his will, but she refused to serve.

In an appropriate action to determine the respective interests of the sister and the brother's son in Greenacre, if the sister is adjudged to be the owner of all of Greenacre, the most likely reason for the judgment will be that

A: the Statute of Frauds prevents the proof of the sister's oral agreement.
B: the brother could not unilaterally sever the joint tenancy.
C: the sister's nomination as executrix of the brother's estate does not prevent her from asserting her claim against the son.
D: the record title of the joint tenancy in Greenacre can be changed only by a duly recorded instrument.

The explanation for the answer is:

Answer A is correct. The brother and sister held the property in joint tenancy. A joint tenancy cannot be created without the "four unities" (time, title, possession and interest), and can be terminated in one of two ways: by partition or by severance. One of the rights associated with a joint tenancy is the right of survivorship. Where two parties hold a property in joint tenancy and one dies, the decedent's interest in the property terminates and the survivor's interest is increased to 100%. Where one joint tenant makes an inter vivos conveyance of their interest in the property, however, a severance occurs and the joint tenancy is destroyed. Although the brother's son will argue that the sister made such a conveyance to the Audubon society and severed the joint tenancy, there is no sale contract, deed or other written evidence of a conveyance sufficient to overcome the requirements of the Statute of Frauds.

Answer B is incorrect because the brother could have taken actions individually that would have led to a severance (i.e. an *inter vivos* conveyance). Answer D is incorrect because the recording requirement is not sufficient to negate the sister's right of survivorship.

Question 23 - Real Property - Contract

The question was:

A buyer and seller entered into a valid, enforceable written contract by which the buyer agreed to purchase Blackacre, which was the seller's residence. One of the contract provisions was that after closing, the seller had the right to remain in residence at Blackacre for up to 30 days before delivering possession to the buyer. The closing took place as scheduled. Title passed to the buyer and the seller remained in possession.

Within a few days after the closing, the new house next door that was being constructed for the seller was burned to the ground, and at the end of the 30-day period the seller refused to move out of Blackacre; instead, he tendered to the buyer a monthly rental payment in excess of the fair rental value of Blackacre. The buyer rejected the proposal and that day brought an appropriate action to gain immediate possession of Blackacre. The contract was silent as to the consequences of the seller's failure to give up possession within the 30-day period, and the jurisdiction in which Blackacre is located has no statute dealing directly with this situation, although the landlord-tenant law of the jurisdiction requires a landlord to give a tenant 30 days notice before a tenant may be evicted. The buyer did not give the seller any such 30-day statutory notice.

The buyer's best legal argument in support of his action to gain immediate possession is that the seller is a

A: trespasser *ab initio*.
B: licensee.
C: tenant at sufferance.
D: tenant from month to month.

The explanation for the answer is:

The correct answer is B. The buyer's best legal argument is that the seller is a mere licensee who does not hold any property rights with regard to Blackacre. A license is a contractual right to use land that is owned by another party. Because it is a contractual right rather than a property right, the owner of the property is free to terminate or revoke that license at any time. While the licensee may have contractual remedies available to her where a wrongful revocation occurs, these do not affect the property rights of the owner. Therefore, answer B represents the buyer's best argument.

Answer A is incorrect because the seller was contractually entitled to enter the land. Answers C and D are incorrect because the buyer's best argument is that the seller is a licensee without property rights rather than a tenant (since tenants do have limited property rights).

Question 31 - Real Property - Rights in Land

The question was:

In 2000, the owner of a 100-acre tract prepared and duly recorded a subdivision plan called Happy Acres. The plan showed 90 one-acre lots and a ten-acre tract in the center that was designated "Future Public School." The owner published and distributed a brochure promoting Happy Acres which emphasized the proximity of the lots to the school property and indicated potential tax savings "because the school district will not have to expend tax money to acquire this property." There is no specific statute concerning the dedication of school sites.

The owner sold 50 of the lots to individual purchasers. Each deed referred to the recorded plan and also contained the following clause: "No mobile home shall be erected on any lot within Happy Acres." A woman was one of the original purchasers from the owner.

In 2006, the owner sold the remaining 40 lots and the ten-acre tract to a man by a deed which referred to the plan and contained the restriction relating to mobile homes. The man sold the 40 lots to individual purchasers and the ten-acre tract to a friend. None of the deeds from the man referred to the plan or contained any reference to mobile homes.

The friend has announced his intention of erecting a fast food restaurant on the ten-acre tract, and the woman has filed an action to enjoin the friend. If the woman wins, it will be because

A: the woman has an equitable servitude concerning the use of the tract.
B: the woman, as a taxpayer, has legal interest in the use of the tract.
C: the woman is a creditor beneficiary of the owner's promise with respect to the tract.
D: the friend is not a bona fide purchaser.

The explanation for the answer is:

Answer A is correct. The restriction constitutes an equitable servitude. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantee had notice of the servitude, and 3) that the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds (referencing all lots within the 100 acre tract) clearly indicates the restriction is intended to bind subsequent grantees. The duly recorded subdivision plan and the deed language provide subsequent grantees with record notice of the restriction. And a restriction on what can and cannot be built on the land clearly meets the requirement that the restriction touch and concern that land, so the equitable servitude is enforceable. If the woman prevails, it will be on the basis of that enforceable servitude. Answer B is incorrect because the woman's rights as a taxpayer do not give her a legal interest in another's property. Answer C is incorrect because the woman is not a creditor beneficiary. Answer D is incorrect because whether the friend is a BFP is irrelevant to determining whether he is bound by the restriction.

Question 33 - Real Property - Ownership

The question was:

In 2000, the owner of a 100-acre tract prepared and duly recorded a subdivision plan called Happy Acres. The plan showed 90 one-acre lots and a ten-acre tract in the center that was designated "Future Public School." The owner published and distributed a brochure promoting Happy Acres which emphasized the proximity of the lots to the school property and indicated potential tax savings "because the school district will not have to expend tax money to acquire this property." There is no specific statute concerning the dedication of school sites.

The owner sold 50 of the lots to individual purchasers. Each deed referred to the recorded plan and also contained the following clause: "No mobile home shall be erected on any lot within Happy Acres." A woman was one of the original purchasers from the owner.

In 2006, the owner sold the remaining 40 lots and the ten-acre tract to a man by a deed which referred to the plan and contained the restriction relating to mobile homes. The man sold the 40 lots to individual purchasers and the ten-acre tract to a friend. None of the deeds from the man referred to the plan or contained any reference to mobile homes.

In 2007, the school board of the district in which Happy Acres is situated has voted to erect a new school on the ten-acre tract. In an appropriate action between the school board and the friend to determine title, the result will be in favor of

A: the friend, because the school board has been guilty of laches.
B: the friend, because his deed did not refer to the subdivision plan.
C: the school board, because the friend had constructive notice of the proposed use of the tract.
D: the school board, because there has been a dedication and acceptance of the tract.

The explanation for the answer is:

Answer D is correct. Although most of the facts in this question deal with the restrictive covenant, the issue being tested is public dedications. Dedication and acceptance requires: (1) an intention on the part of the owner to dedicate; and (2) acceptance by the public. Under common law, no specific length of possession is necessary to constitute a valid dedication; all that is required is the assent of the owner, and the enjoyment by the public for such a length of time that the public accommodation and private rights would be materially affected by a denial or interruption of the enjoyment. Therefore, acceptance came when the original parcels of land were sold with the recorded plan, not when the school board voted to build the school in 2007. Since private rights would be materially affected by a denial of the dedication, there has been an acceptance and the school board will prevail.

Answer A is incorrect because there is no indication that the school board's delay in announcing the new school building was unreasonable. Answer B is incorrect because the absence of the subdivision plan on the friend's deed does not alter the school board's right to the land. Answer C is incorrect because the friend's constructive notice has no legal effect on the dedication.

Question 45 - Real Property - Rights in Land

The question was:

In 1990, the owner in fee simple absolute, conveyed Stoneacre, a five-acre tract of land. The relevant, operative words of the deed conveyed to "the church [a duly organized religious body having power to hold property] for the life of my son and from and after the death of my said son to all of my grandchildren and their heirs and assigns in equal shares; provided, the church shall use the premises for church purposes only."

In an existing building on Stoneacre, the church immediately began to conduct religious services and other activities normally associated with a church.

In 2005, the church granted a neighbor a right to remove sand and gravel from a one-half acre portion of Stoneacre upon the payment of royalty. The neighbor has regularly removed sand and gravel since 2005 and paid royalty to the church. The church has continued to conduct religious services and other church activities on Stoneacre.

All four of the living grandchildren of the grantor joined by a guardian ad litem to represent unborn grandchildren, instituted suit against the church and the neighbor seeking damages for the removal of sand and gravel and an injunction preventing further acts of removal. There is no applicable statute. Which of the following best describes the likely disposition of this lawsuit?

A: The plaintiffs should succeed, because the interest of the church terminated with the first removal of sand and gravel.
B: The church and the neighbor should be enjoined, and damages should be recovered but impounded for future distribution.
C: The injunction should be granted, but damages should be denied, because the grantor and his son are not parties to the action.
D: Damages should be awarded, but the injunction should be denied.

The explanation for the answer is:

Answer B is correct. The facts indicate that the church holds a life estate (measured by the life of the grantor's son) and the grandchildren hold remainders. As a life tenant, the church has a duty not to commit voluntary or permissive waste relevant to the property during its life tenancy. A failure to keep the property in repair, pay taxes on the property, or pay interest on any mortgage on the property all constitute permissive waste. Voluntary waste, on the other hand, is an affirmative act that serves to somehow damage the land. This "damage," however, is not necessarily an act that reduces the value of the land. For example, a life tenant's affirmative act of changing the basic use of the land during his tenancy would be characterized as "damage" to the land that constitutes voluntary waste. The life tenant is held liable to the remaindermen for any waste during his or her life tenancy. In this case, the facts indicate that the church has committed voluntary waste by allowing the neighbor to remove resources from the land, and also (possibly) by changing the basic use of the land to a purpose other than "for church purposes." The church is liable to the remaindermen (the grandchildren), so an injunction is warranted.

Answer A is incorrect because it is not clear whether the right granted to the neighbor by the church constitutes use of the premises by the church for non-church purposes. Also, the question is not asking if the condition of the life estate has or has not been met. The question tricks you into thinking this, but pay close attention to the call of the question. Answer C is incorrect because the remaindermen have a property right and would be entitled to damages. Answer D is incorrect because the grandchildren have a right to prevent further waste by the neighbor and the church.

Question 57 - Real Property - Contract

The question was:

A landowner was the owner of a large subdivision. A purchaser became interested in purchasing a lot but could not decide between Lot 40 and Lot 41. The price and fair market value of each of those two lots was $5,000. The purchaser paid the landowner $5,000, which the landowner accepted, and the landowner delivered to the purchaser a deed which was properly executed, complete, and ready for recording in every detail except that the space in the deed for the lot number was left blank. The landowner told the purchaser to fill in either Lot 40 or Lot 41 according to his decision and then to record the deed. The purchaser visited the development the next day and completely changed his mind, selecting Lot 25. He filled in Lot 25 and duly recorded the deed. The price of Lot 25 and its fair market value was $7,500.

Immediately upon learning what the purchaser had done, the landowner brought an appropriate action against the purchaser to rescind the transaction. If the landowner loses, the most likely basis for the judgment is that

A: The landowner's casual business practices created his loss.
B: the need for certainty in land title records controls.
C: the agency implied to complete the deed cannot be restricted by the oral understanding.
D: the recording of the deed precludes any questioning of its provisions in its recorded form.

The explanation for the answer is:

Answer C is correct. The only requirements that must be met for a conveyance of land to be valid (and thereby transfer legal title in that land from one party to another) are execution and delivery of the deed. The execution requirement is satisfied as long as the deed is signed by the party to be charged (the seller). However, execution and delivery of a deed will not suffice to establish legal title where the deed fails to adequately identify the grantee to whom it was delivered and the exact plot of land it purports to convey. Nevertheless, if the land description is left blank, the grantee may fill in the description if they have the explicit authority to do so. In this case, the facts indicate that the deed was signed by the landowner and delivered to the purchaser with instructions to fill in the plot number. With these instructions, the landowner created an *implied agency* in the purchaser to fill in that line of the deed. Therefore, if this agency is not controlled by the oral understanding, then the landowner will lose.

B is incorrect because a grantee may complete the description of the land being transferred when he is explicitly given that authority by the grantor. Since the purchaser filled in the plot number before recording the deed, the land was adequately identified. Answer D is incorrect because a deed and its provisions are not presumed valid simply because they have been recorded. Answer A, although factually correct, is not the best answer as it does not state any applicable principle of law.

Question 84 - Real Property - Ownership

The question was:

The following events took place in a state that does not recognize common-law marriage. The state does recognize the common-law estate of tenancy by the entirety and has no statute on the subject.

A man and woman, who were never formally married, lived together over a seven-year period. During this time the woman identified herself using the man's last name with the knowledge and consent of the man. The couple maintained several charge accounts at retail stores under the husband's last name, and they filed joint income tax returns using his last name for both of them.

Within this period the man decided to buy a home. The deed was in proper form and identified the grantees as "Mr. and Mrs. [last name], and their heirs and assigns forever as tenants by the entirety." The man made a down payment of $10,000, and gave a note and mortgage for the unpaid balance. The couple signed the note and mortgage as husband and wife. The man made monthly payments as they became due until he and the woman had a disagreement and he abandoned her and the house. The woman then made the payments for three months. She then brought an action against the man for partition of the land in question. The prayer for partition should be

A: denied, because a tenant by the entirety has no right to partition.
B: denied, because the man has absolute title to the property.
C: granted, because the tenancy by the entirety that was created by the deed was severed when the man abandoned the woman.
D: granted, because the estate created by the deed was not a tenancy by the entirety.

The explanation for the answer is:

D is correct. This question requires you to be able to identify a tenancy by the entirety. Similar to a joint tenancy, a tenancy by the entirety requires the presence of several unities (time, title, interest, possession and person). But unlike a joint tenancy, this type of tenancy requires that the tenants be *married*. The other distinguishing feature of a tenancy by the entirety is the limit on the ways that it can be severed. A tenancy by the entirety may only be severed: 1) by divorce, 2) by the death of one spouse, 3) by a creditor of *both* spouses, or 4) by a mutual agreement between the husband and wife. In this case, the man and woman are not husband and wife, and are thereby prevented from entering into a marital estate. As such, answers A and C may be eliminated. Answer B is incorrect because the couple's mistaken assertion in the deed that they had created a tenancy by the entirety did not serve to negate the woman's interest in the property. As it is not a tenancy by the entirety and the woman has an interest in the property, she has a right to seek partition and answer D is correct.

Question 97 - Real Property - Contract

The question was:

Blackacre is a three-acre tract of land with a small residence. The owner of Blackacre rented it to a tenant at a monthly rental of $200. The tenant and the owner orally agreed that the tenant would purchase Blackacre from the owner for the sum of $24,000, payable at the rate of $200 a month for ten years and also would pay the real estate taxes and the expenses of insuring and maintaining Blackacre. The owner agreed to give the tenant a deed to Blackacre after five years had passed and $12,000 had been paid on account and to accept from the tenant a note secured by a mortgage for the balance.

The tenant continued in possession of Blackacre and performed his obligations as orally agreed. The tenant, without consulting the owner, made improvements for which he paid $1,000. When the tenant had paid $12,000, he tendered a proper note and mortgage to the owner and demanded the delivery of the deed as agreed. The owner did not deny the oral agreement but told the tenant that she had changed her mind, and she refused to complete the transaction. The tenant then brought an action for specific performance. The owner pleaded the Statute of Frauds as her defense. If the owner wins, it will be because

A: nothing the tenant could have done would have overcome the original absence of a written agreement.
B: the actions and payments of the tenant are as consistent with his being a tenant as with an oral contract.
C: the tenant did not secure the owner's approval for the improvements that he made.
D: the owner has not received any unconscionable benefit, and, therefore, the tenant is not entitled to equitable relief.

The explanation for the answer is:

The Statute of Frauds mandates that any contract for the sale of land must be in writing and signed by the party to be charged. The purpose of the statute is to prevent a party from fraudulently obtaining land by asserting that an oral contract existed where it in fact did not. The writing requirement serves this function by verifying the intent of the parties to enter into a contract for the sale of land. In this case, the tenant's only evidence of an oral contract to sell Blackacre is a history of regular monthly payments and the fact that he made minor improvements to the property. If the owner prevails, it will be because the tenant's actions are just as consistent with him being a tenant as they are with him being party to an oral contract. Therefore, answer B is correct.

Answer A is incorrect because the tenant could have overcome the absence of a written agreement by proving a part performance of an oral agreement. Answer C is incorrect because a tenant's failure to obtain approval before making improvements to land does not somehow create an ownership right in that land. Answer D is incorrect because it is the Statute of Frauds, not equitable principles, that is determinative on these facts.

Question 108 - Real Property - Ownership

The question was:

A grantor conveyed a farm "to my daughter, her heirs and assigns, so long as the premises are used for residential and farm purposes, then to her son and his heirs and assigns." The jurisdiction in which the farm is located has adopted the common-law Rule Against Perpetuities unmodified by statute. As a consequence of the conveyance, the grantor's interest in the farm is

A: nothing.
B: a possibility of reverter.
C: a right of entry for condition broken.
D: a reversion in fee simple absolute.

The explanation for the answer is:

Answer B is correct. The estate granted to the daughter is a fee simple determinable. A fee simple determinable has the potential to run indefinitely, but is also "end-able," meaning it can be terminated by the happening of some later event. Further, where the estate given by a grantor is a fee simple determinable, that grantor retains a possibility of reverter unless the interest is given to a grantee in the form of an executory interest. In this case, although the daughter's interest has the potential to run indefinitely, it can be terminated by a later event; specifically, by her allowing the use of the land for anything other than residential and farm purposes. Because it is possible that the grant to the son and his heirs may vest 21 years after a life in being, the grant is in violation of the Rule Against Perpetuities and thus invalid. After the operation of the Rule against Perpetuities, the daughter holds a fee simple determinable, and the grantor retains a possibility of reverter. The possibility of reverter is never subject to the Rule against Perpetuities. Therefore, B is the correct answer while A, C, and D are incorrect.

Question 109 - Real Property - Ownership

The question was:

A tract of land was conveyed to a husband and a wife by a deed which, in the jurisdiction in which the land is situated, created a tenancy in the entirety with the right of survivorship. The jurisdiction has no statute directly applicable to any of the problems posed.

The wife, by deed, conveyed "my undivided one-half interest in [the land]" to her friend. The husband heard about the conveyance a week later, but the wife died before he could talk to her about the conveyance. In an appropriate action between the friend and the husband in which title to the land is at issue, the husband will

A: prevail, because he was the first to take possession of the land.
B: prevail because the tenancy created in the wife and the husband was a tenancy by the entirety.
C: not prevail because he had knowledge of the conveyance prior to the woman's death.
D: not prevail, because the friend and the husband own the tract of land as tenants in common.

The explanation for the answer is:

Answer B is correct. This question requires that you be able to distinguish a tenancy by the entirety from a joint tenancy. A distinguishing feature of a tenancy by the entirety is that it can only be severed by: (1) divorce, (2) the death of one spouse, (3) a creditor of both spouses, or (4) by a mutual agreement between the husband and wife. A joint tenancy, on the other hand, can be severed by one of the tenants making an *inter vivos* conveyance. Where a single joint tenant makes an *inter vivos* conveyance of her interest in the property, a severance occurs and a tenancy in common is created.

Here, the wife and the husband held a tenancy by the entirety, so the wife's conveyance did not sever it, and the husband's right of survivorship made him the sole owner of the land upon the wife's death. Thus, B is the correct answer. Answer C can be eliminated because knowledge of the conveyance has no effect on the husband's rights. Likewise, answer A can be eliminated because the timing of the husband's possession does not affect the rights of either party. D is incorrect because the tenancy in the entirety precludes the wife's attempted conveyance.

Question 123 - Real Property - Rights in Land

The question was:

Meadowview is a large tract of undeveloped land. The man who owns Meadowview prepared a development plan creating 200 house lots in Meadowview with the necessary streets and public areas. The plan was fully approved and duly recorded. However, construction of the streets has not yet begun, and none of the streets can be opened as public ways until they are completed in accordance with the applicable ordinances.

College Avenue, a street in the Meadowview development, abuts a parcel of land that is adjacent to Meadowview and owned by a pharmacist. This parcel has no access to any public way except a poorly developed road that is inconvenient and cannot be used without great expense. The pharmacist sold the parcel to a friend. The description used in the deed was the same as that used in prior deeds except that the portion of the description which formerly said, "thence by land of Meadowview, north-easterly a distance of 200 feet, more or less," was changed to "thence by College Avenue as laid out on the Plan of Meadowview," with full reference to the plan and its recording data. The friend now seeks a building permit that shows she intends to use College Avenue for access to her parcel of land. The man objects to the granting of a building permit on the grounds that he has never granted any right to the pharmacist or her friend to use College Avenue. There are no governing statutes or ordinances relating to the problem.

The man brings an appropriate action in which the right of the friend to use College Avenue without an express grant from the man is at issue. The best argument for the man in this action is that

A: the friend's right must await the action of appropriate public authorities to open College Avenue as a public street, since no private easements arose by implication.
B: the Statute of Frauds prevents the introduction of evidence which might prove the necessity for the friend to use College Avenue.
C: the friend's right to use College Avenue is restricted to the assertion of a way by necessity, and the facts preclude the success of such a claim.
D: the friend would be unjustly enriched if he were permitted to use College Avenue.

The explanation for the answer is:

A is correct. The man's best argument is that the friend has not obtained an easement by implication. An easement by implication can arise either through: (1) necessity, or (2) previous use by a common owner. An easement by necessity will be implied where a property is "landlocked," meaning there is no way to access the land without crossing another party's land. But if any means of access does exist, even an inconvenient one, then there is no necessity and no easement will be implied. In this case, the parcel of land is not landlocked because it can be accessed by way of the "old, poorly developed road." Although that road is inconvenient, it still constitutes access, so an easement by necessity will not be implied for the friend. Likewise, the friend cannot obtain an easement based on previous use because there is no indication that the plots ever had a common owner. Therefore, answer A provides the man's best argument.

Answer B is incorrect because the Statute of Frauds is irrelevant to necessity determinations. Answer C, although technically correct, is not the man's best argument, because an easement by necessity is not the only type of implied easement that the friend may assert. Answer D is incorrect because unjust enrichment is not present on these facts because the man did not confer a benefit on the friend with the reasonable expectation of being compensated.

Question 124 - Real Property - Rights in Land

The question was:

Meadowview is a large tract of undeveloped land. The man who owns Meadowview prepared a development plan creating 200 house lots in Meadowview with the necessary streets and public areas. The plan was fully approved by all necessary governmental agencies and duly recorded. However, construction of the streets, utilities, and other aspects of the development of Meadowview has not yet begun, and none of the streets can be opened as public ways until they are completed in accordance with the applicable ordinances of the municipality in which Meadowview is located. College Avenue, one of the streets laid out as part of the Meadowview development, abuts Whiteacre, an adjacent one-acre parcel owned by a woman. Whiteacre has no access to any public way except an old, poorly developed road which is inconvenient and cannot be used without great expense. The woman sold Whiteacre to a friend. The description used in the deed from the woman to the friend was the same as that used in prior deeds except that the portion of the description which formerly said, "thence by land of Black, north-easterly a distance of 200 feet, more or less," was changed to "thence by College Avenue as laid out on the Plan of Meadowview North 46-East 201.6 feet," with full reference to the plan and its recording data.

The friend now seeks a building permit which will show that the friend intends to use College Avenue for access to Whiteacre. The man objects to the granting of a building permit on the grounds that he has never granted any right to the woman or her friend to use College Avenue. There are no governing statutes or ordinances relating to the problem. The man brings an appropriate action in which the right of the friend to use College Avenue without an express grant from the man is at issue.

The best argument for the friend in this action is that

A: there is a way by necessity over Meadowview's lands to gain access to a public road.
B: the deed from the woman to her friend referred to the recorded plan and therefore created rights to use the streets delineated on the plan.
C: sale of lots in Meadowview by reference to its plan creates private easements in the streets shown in the plan.
D: the recording of the plan is a dedication of the streets shown on the plan to public use.

The explanation for the answer is:

The correct answer is D. The friend's best argument is that the streets on the plan signify a public dedication. Where there is: 1) an expressed intent to dedicate land for public use, and 2) an acceptance of the dedication, a public dedication of land is established, and title to the land will pass to the public entity. In this case, the plan was recorded containing language that clearly indicates that streets and other "public areas" have been set aside for public use. Further, the plan was fully approved by all necessary government (public) agencies, which arguably establishes that they have accepted the dedication of those streets and areas to the public. Therefore, the friend's best argument is that the plan constitutes a public dedication of the street areas, and answer D is correct.

Answer A is incorrect because there is an alternate means to access Meadowview - by way of the "old, poorly developed road." An inconvenient access is still a means of access, so there is no necessity to use College Avenue. Answer B is incorrect because the woman does not have the power to grant her friend an easement over the man's land, regardless of what the woman wrote in her friend's deed. Answer C is incorrect because: 1) sale of lots by reference to the plan did not somehow create private easements in the streets, and 2) even if it had, the friend does not own a lot in that private subdivision

Question 134 - Real Property - Contract

The question was:

The owner in fee simple of Highacre, an apartment house property, entered into an enforceable written agreement to sell Highacre to a buyer. The agreement provided that a good and marketable title was to be conveyed free and clear of all encumbrances. However, the agreement was silent as to the risk of fire prior to closing, and there is no applicable statute in the state where the land is located. The premises were not insured. The day before the scheduled closing date, Highacre was wholly destroyed by fire. When the buyer refused to close, the seller brought an action for specific performance. If the seller prevails, the most likely reason will be that

A: the failure of the buyer to insure his interest as the purchaser of Highacre precludes any relief for him.
B: the remedy at law is inadequate in actions concerning real estate contracts, and either party is entitled to specific performance.
C: equity does not permit consideration of surrounding circumstances in actions concerning real estate contracts.
D: the doctrine of equitable conversion applies.

The explanation for the answer is:

D is correct. With regard to real estate purchases, the time period between contracting and closing is governed by the doctrine of equitable conversion. Once the contract is signed, the risk of loss for any damage to the property that: 1) occurs before the closing, and 2) is not the seller's fault, will fall on the buyer. This is true regardless of whether the seller still physically possesses the land. That is because through the doctrine of equitable conversion, title to the property has been "converted" to the buyer through the operation of equitable principles. Because the buyer bears the risk after contracting, and the facts do not indicate the seller was responsible for the fire damage that occurred, the most likely reason for the seller to prevail will be the application of the doctrine of equitable conversion, so answer D is correct.

Answer A is incorrect because the buyer was not required to obtain such insurance, and in fact could have required the seller to do so by simply making that a condition of the sale contract. Answer B is incorrect because the seller's damages for the buyer's failure to close will be equal to the sale price - which is the same amount the seller would recover through specific performance of the sale contract. Answer C is not a correct statement of law.

Question 143 - Real Property - Contract

The question was:

A landlord, the owner in fee simple of a small farm consisting of thirty acres of land improved with a house and several outbuildings, leased the same to a tenant for a ten-year period. After two years had expired, the government condemned twenty acres of the property and allocated the compensation award to the landlord and tenant according to their respective interest so taken. It so happened, however, that the twenty acres taken embraced all of the farm's tillable land, leaving only the house, outbuildings, and a small woodlot. There is no applicable statute in the jurisdiction where the property is located nor any provision in the lease relating to condemnation. The tenant quit possession, and the landlord brought suit against him to recover rent. The landlord will

A: lose, because there has been a frustration of purpose which excuses the tenant from further performance of his contract to pay rent.
B: lose, because there has been a breach of the implied covenant of quiet enjoyment by the landlord's inability to provide the tenant with possession of the whole of the property for the entire term.
C: win, because of the implied warranty on the part of the tenant to return the demised premises in the same condition at the end of the term as they were at the beginning.
D: win, because the relationship of landlord and tenant was unaffected by the condemnation, thus leaving the tenant still obligated to pay rent.

The explanation for the answer is:

Answer D is correct. Where the government exercises its condemnation powers, the taking will affect not only the owner of the land, but also any tenants who are leasing that land. The extent of the effect on the tenant's rights depends upon whether there was a complete or partial taking. Where there has been a complete taking (meaning the government has taken all of the property that the tenant was leasing), the lease is automatically terminated, and the tenant has no further obligation to make payments. If, however, there was only a partial taking (meaning some but not all of the land being leased was taken), the tenant is still responsible for making payments, but only in an amount proportionate to the land that was not taken. Note that in the case of a partial taking, the tenant will share in the monies paid by the government to the landlord for the taking to the extent of the tenant's rent liability in the portion of land that was taken. In this case, the facts indicate that part but not all of the land the tenant was leasing was taken by the government. Because there was only a partial taking, the tenant's lease is still in effect.

Answer A is incorrect because frustration of purpose is irrelevant to the tenant's contractual obligation to pay for the land he is still leasing (whether he chooses to use that land or not). Answers B and C are incorrect because a government's exercise of its constitutional taking powers does not implicate the warranty of quiet enjoyment, nor does it make a tenant liable for the land taken.

Question 162 - Real Property - Rights in Land

The question was:

A landowner owns and possesses Goodacre, on which there is a lumber yard. The landowner conveyed to an electric company the right to construct and use an overhead electric line across Goodacre to serve other properties. The conveyance was in writing, but the writing made no provision concerning the responsibility for repair or maintenance of the line. The electric company installed the poles and erected the electric line in a proper and workmanlike manner. Neither the landowner nor the electric company took any steps toward the maintenance or repair of the line after it was built. Neither party complained to the other about any failure to repair. Because of the failure to repair or properly maintain the line, it fell to the ground during a storm. In doing so, it caused a fire in the lumber yard and did considerable damage. The landowner sued the electric company to recover for damages to the lumber yard. The decision should be for

A: The landowner, because the owner of an easement has a duty to maintain the easement so as to avoid unreasonable interference with the use of the servient tenement by its lawful possessor.
B: The landowner, because the owner of an easement is absolutely liable for any damage caused to the servient tenement by the exercise of the easement.
C: The electric company, because the possessor of the servient tenement has a duty to give the easement holder notice of defective conditions.
D: The electric company, because an easement holder's right to repair is a right for its own benefit, and is therefore inconsistent with any duty to repair for the benefit of another.

The explanation for the answer is:

Answer A is the correct answer. An easement holder (the dominant estate) is required to make any repairs to that easement that become necessary over time. The dominant estate has the right to enter land owned by the party that the easement crosses (the servient estate) to make repairs to that easement. Where the repairs somehow alter or damage the land, the easement holder must reasonably restore the land to the condition that it was in before the repairs were made. Furthermore, the servient estate has no obligation to maintain or make repairs to the easement - the dominant estate is solely responsible for those tasks. In this case, the electric company, the dominant estate, took no steps whatsoever to keep the easement in repair. That failure led to extensive damage to the landowner's property. Because the electric company was solely responsible for making the necessary repairs, the decision should be for the landowner.

Answer B is incorrect because the easement owner is only liable for damage that its actions or failures to act cause, not for damages caused by the servient estate. Answer C is incorrect because the landowner had no duty to inform the electric company - it was the electric company's duty to inspect and maintain the easement. Answer D is incorrect because the electric company had an absolute duty to repair.

Question 168 - Real Property - Titles

The question was:

The owner in fee simple of Brownacre conveyed Brownacre by quitclaim deed to her daughter who paid no consideration for the conveyance. The deed was never recorded. About a year after the delivery of the deed, the grantor decided that this gift had been ill-advised. She requested that her daughter destroy the deed, which the daughter dutifully and voluntarily did. Within the month following the destruction of the deed, the grantor and the daughter were killed in a common disaster. Each of the successors in interest claimed title to Brownacre. In an appropriate action to determine the title to Brownacre, the probable outcome will be that

A: The grantor was the owner of Brownacre, because the daughter was a donee and therefore could not acquire title by quitclaim deed.
B: The grantor was the owner of Brownacre, because title to Brownacre reverted to her upon the voluntary destruction of the deed by the daughter.
C: The daughter was the owner of Brownacre, because her destruction of the deed to Brownacre was under the undue influence of the grantor.
D: The daughter was the owner of Brownacre, because the deed was merely evidence of her title, and its destruction was insufficient to cause title to pass back to the grantor.

The explanation for the answer is:

Answer D is correct. The only requirements for transferring legal title in land are execution and delivery of the deed. Execution occurs when the grantor signs the deed. Delivery is effected by proving intent to pass title, even if the grantor never physically gives the title document to the grantee. Once title has been conveyed, the grantee can return it by executing and delivering a new deed back to the grantor. Here, the owner intended to pass title to the daughter, physically delivered a deed to the daughter, and the daughter accepted. The owner's execution and delivery of the deed, along with the daughter's acceptance, transferred title to the daughter. The destruction of the deed has no effect, as the deed is merely evidence of title, not the actual title. Therefore, the daughter held title at the time of her death.

Answer A is incorrect because it is possible to convey a gift via a quitclaim deed. Answers B and C are incorrect because the deed is merely evidence of title, not the title itself, and the destruction of the deed after a valid conveyance does not cause ownership to revert.

Question 183 - Real Property - Titles

The question was:

A landowner contracted to sell a tract of land to a painter by general warranty deed. However, at the closing the painter did not carefully examine the deed and accepted a quitclaim deed without covenants of title. The painter later attempted to sell the land to a purchaser, who refused to perform because the landowner had conveyed an easement for a highway across the land before the painter bought the property.

The painter sued the landowner for damages. Which of the following arguments will most likely succeed in the landowner's defense?

A: The existence of an easement does not violate the contract.
B: The mere existence of an easement which is not being used does not give rise to a cause of action.
C: The painter's cause of action must be based on the deed and not on the contract.
D: The proper remedy is rescission of the deed.

The explanation for the answer is:

The correct answer is C. This question requires you to understand the doctrine of merger. When two parties contract for the purchase and sale of a plot of land, the seller is generally required to provide marketable title at the closing and to deliver the deed to the buyer who, presumably, will accept it. Once the buyer accepts the deed, the sale contract merges into the deed, and any contract provisions that were not memorialized in that deed are destroyed. In this case, as soon as the landowner and the painter's sale closed, and the painter accepted the quitclaim deed from the landowner, any contract provisions relating to covenants of title were destroyed. Therefore, the painter's only basis for a claim against the landowner will arise from the deed, as the contract and all its provisions no longer exist.

Answer A is incorrect because the contract and its provisions became irrelevant as soon as the deed was accepted. Answer B is incorrect because it is the existence of the easement, not the degree to which it is being used, that creates a cause of action. Answer D is incorrect because the buyer's failure to check the deed does not provide adequate grounds for a unilateral rescission.

Question 189 - Real Property - Rights in Land

The question was:

A landlord leased a warehouse building and the lot on which it stood to a tenant for a term of ten years. The lease contained a clause prohibiting the tenant from subletting his interest. Can the tenant assign his interest under the lease?

A: Yes, because restraints on alienation of land are strictly construed.
B: Yes, because disabling restraints on alienation of land are invalid.
C: No, because the term "subletting" includes "assignment" when the term is employed in a lease.
D: No, because even in the absence of an express prohibition on assignment, a tenant may not assign without the landlord's permission.

The explanation for the answer is:

Answer A is correct. This question requires you to distinguish between an assignment and a sublease. An assignment of a lease by a tenant occurs where the tenant transfers all his rights and duties under a lease to another party (an "assignee") for the entire length of time remaining on the lease. By contrast, a sublease is a transfer by a tenant to another party (a "sublessee") for a time period shorter than the time remaining on the lease. A landlord is free to place limits on alienation within the terms of the lease, thereby preventing the tenant from reassigning, subletting, or both. Any such restriction, however, will be strictly construed according to its explicit terms. In this case, the landlord has only prohibited the tenant from subletting. The restriction will be strictly construed, and since it does not state that assignment is prohibited, the tenant is free to assign his interest.

Answer B is incorrect because restraints on alienation are not automatically invalid. Answer C is incorrect because the term "subletting" will be strictly construed. Answer D is incorrect because a tenant is free to assign or sublet as long as the lease does not expressly prohibit doing so.

Question 194 - Real Property - Ownership

The question was:

The following facts concern a tract of land in a state which follows general United States law. Each instrument is in proper form, recorded, marital property rights were waived when necessary, and each person named was adult and competent at the time of the transaction.

1. In 1970 Oleg, the owner, conveyed his interest in fee simple "to my brothers Bob and Bill, their heirs and assigns as joint tenants with the right of survivorship."

2. In 1980 Bob died, devising his interest to his only child, "Charles, for life, and then to Charles' son, Sam, for life, and then to Sam's children, their heirs and assigns."

3. In 2000 Bill died, devising his interest "to my friend, Frank, his heirs and assigns."

4. In 2002 Frank conveyed by quitclaim deed "to Paul, his heirs and assigns whatever right, title and interest I own."

Paul has never married. Paul has contracted to convey marketable record title in the land to Patrick. Can Paul do so?

A: Yes, without joinder of any other person in the conveyance.
B: Yes, if Charles, Sam, and Sam's only child (Gene, aged 25) will join in the conveyance.
C: No, regardless of who joins in the conveyance, because Sam may have additional children whose interests cannot be defeated.
D: No, regardless of who joins in the conveyance, because a title acquired by quitclaim deed is impliedly unmerchantable.

The explanation for the answer is:

Answer A is correct. This question is best answered by charting each party's interest, starting with the first conveyance. 1 - Oleg conveyed to Bob and Bill as joint tenants with the right of survivorship. 2 - Bob died. Because he and Bill held the property as joint tenants, when Bob died his entire interest automatically went to Bill. The conveyances in Bob's will had no effect, because immediately upon his death his interest went to Bill. 3 - Bill died. Because he owned the property outright, he was free to devise his entire interest to Frank. 4 - Frank, the sole owner of the property, conveyed it to Paul. Because Paul is now the sole owner of the property, he may transfer his interest without having to join any other parties in the conveyance, so answer A is correct.

Answer B is incorrect because Charles and his heirs never received an interest from Bob. Answer C is incorrect because Paul is the sole owner and may convey the property however he wishes to. Answer D is incorrect because it is untrue that a title acquired by quitclaim deed is unmerchantable.

Question 203 - Real Property - Rights in Land

The question was:

An owner in fee simple laid out a subdivision of 325 lots on 150 acres of land. He obtained governmental approval (as required by applicable ordinances) and, between 1998 and 2000, he sold 140 of the lots, inserting in each of the 140 deeds the following provision:

"The grantee, for himself and his heirs, assigns and successors, covenants and agrees that the premises conveyed herein shall have erected thereon one single-family dwelling and that no other structure (other than a detached garage, normally incident to a single-family dwelling) shall be erected or maintained; and, further, that no use shall ever be made or permitted to be made other than occupancy by a single family for residential purposes only."

Because of difficulty encountered in selling the remaining lots for single family use, in January 2001, the owner advertised the remaining lots with prominent emphasis: "These lots are not subject to any restriction and purchasers will find them adaptable to a wide range of uses."

A buyer had purchased one of the 140 lots and brought suit against the owner to establish that the remaining 185 lots, as well as the 140 sold previously, can be used only for residential purposes by single families. Assuming that procedural requirements have been met to permit adjudication of the issue the buyer has raised, which of the following is the most appropriate comment?

A: The owner should win because the provision binds only the grantee.
B: The outcome turns on whether a common development scheme had been established for the entire subdivision.
C: The outcome turns on whether there are sufficient land areas devoted to multiple-family uses within the municipality to afford reasonable opportunity for all economic classes to move into the area so as to satisfy the standards of equal protection of the law.
D: The buyer should win under an application of the doctrine which requires construction of deeds to resolve any doubt against the grantor.

The explanation for the answer is:

Answer B is correct. The restrictions described in the facts constitute equitable servitudes. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantee had notice of the servitude, and 3) the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds indicates the restriction is intended to bind subsequent grantees. The recording of those deeds would provide later purchasers with record notice of the restriction. And a restriction on what can be built on the land clearly meets the requirement that the restriction touch and concern that land, so an enforceable equitable servitude was created. For an equitable servitude to bind an entire subdivision, however, it must be found in the common building plan for that subdivision. If it is, then anyone who owns a plot of land within the subdivision is bound by the restrictions, and may file suit to enforce those restrictions against other owners.

In this case, the facts state that a subdivision plan outlining restrictions that would apply to all plats within it, was approved by the local government. That plan was for a 325 lot development. If the subdivision plan is interpreted as being intended to establish a common development scheme (and thereby common restrictions) for the entire subdivision, the restrictions contained in the first 140 deeds will bind purchasers of the remaining 185 lots.

Answer A is incorrect because the provision, if interpreted as part of a common development plan, will bind owners of all the lots, not just particular grantees. Answer C is a red herring - socioeconomic concerns are simply irrelevant to determination of property rights between lots in a subdivision. Answer D is incorrect because the determinative issue is whether all 325 lots were part of a common development scheme, not whether there is ambiguity in the deed.

Question 204 - Real Property - Rights in Land

The question was:

An owner in fee simple laid out a subdivision of 325 lots on 150 acres of land. He obtained governmental approval (as required by applicable ordinances) and, between 1998 and 2000, he sold 140 of the lots, inserting in each of the 140 deeds the following provision:

"The grantee, for himself and his heirs, assigns and successors, covenants and agrees that the premises conveyed herein shall have erected thereon one single-family dwelling and that no other structure (other than a detached garage, normally incident to a single-family dwelling) shall be erected or maintained; and, further, that no use shall ever be made or permitted to be made than occupancy by a single family for residential purposes only."

Because of difficulty encountered in selling the remaining lots for single family use, in January 2001, the owner advertised the remaining lots with prominent emphasis: "These lots are not subject to any restriction and purchasers will find them adaptable to a wide range of uses."

Suppose that the owner sold 50 lots during 2001 without inserting in the deeds any provision relating to structures or uses. A businessman purchased one of the 50 lots and proposes to erect a service station and to conduct a retail business for the sale of gasoline, etc. A woman purchased a lot from a man who had purchased from the owner in 1998, and the deed had the provision that it quoted in the fact situation. The woman brings suit to prevent the businessman from erecting the service station and from conducting a retail business. In the litigation between the woman and the businessman, which of the following constitutes the best defense for the businessman?

A: The owner's difficulty in selling with provisions relating to use establishes a change in circumstances which renders any restrictions which may once have existed unenforceable.
B: Enforcement of the restriction, in view of the change of circumstances, would be an unreasonable restraint on alienation.
C: Since the proof (as stated) does not establish a danger of monetary loss to the woman, the woman has failed to establish one of the necessary elements in a cause of action to prevent the businessman from using his lots for business purposes.
D: The facts do not establish a common building or development scheme for the entire subdivision.

The explanation for the answer is:

Answer D is correct. The restrictions in the deeds to first 140 lots sold constitute equitable servitudes. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantee had notice of the servitude, and 3) the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds indicates the restriction is intended to bind subsequent grantees. The recording of those deeds would provide later purchasers with record notice of the restriction. And a restriction on what can be built on the land clearly meets the requirement that the restriction touch and concern that land, so an enforceable equitable servitude was created. That restriction, however, may only be enforced by and against owners of those 140 lots. Some students will incorrectly believe that a subdivision of 325 lots that are all bound by the same restrictions was created. But for an equitable servitude to bind an entire subdivision, it must be found in the common building plan for that subdivision. There is no such plan according to the facts presented - there was only a plan for lots 1 through 140. Because only the owner of a lot with a deed identifying the restriction may enforce that restriction, answer D presents the businessman's best argument. Answer A, B and C are all incorrect because the restrictions on lots 1 through 140 have no relevance to the businessman, who does not own one of those lots.

Question 206 - Real Property - Ownership

The question was:

A landowner owned Brightacre (a tract of land) in fee simple. He conveyed it "to [his friend], his heirs and assigns; but if [his cousin] shall be living thirty years from the date of this deed, then to [his cousin], his heirs and assigns." The limitation "to [his cousin], his heirs and assigns" is

A: valid, because the cousin's interest is a reversion.
B: valid, because the interest will vest, if at all, within a life in being.
C: valid, because the cousin's interest is vested subject to divestment.
D: invalid.

The explanation for the answer is:

Answer B is correct. The Rule Against Perpetuities (RAP) applies to three types of interests: 1) vested remainders subject to open; 2) contingent remainders; and 3) executory interests. The Rule dictates that where any of these interests would vest outside of a life in being plus 21 years, it is void. Answering RAP questions is best accomplished in two parts: 1) identify the type of interests created by the language of the deed, and 2) if the interest is one of the three that the RAP applies to, determine whether it would be possible for that interest to vest any later than twenty-one years after *everyone* alive at the time of the conveyance has died. If it could, then the interest is void. In this case, the will devises the property to the cousin if he is still alive in thirty years. Because the cousin can be used as a measuring life, the conveyance to the cousin and his heirs would vest within twenty-one years of the cousin's death if it will vest at all.

Answer A is incorrect because the cousin's interest is a contingent remainder, not a reversion. Answer C is incorrect because the cousin's interest is a contingent remainder, not a vested remainder subject to total divestment, because it is subject to a condition precedent but not a condition subsequent.

Question 209 - Real Property - Mortgages

The question was:

A husband conveyed his home to his wife for life, remainder to his daughter. There was a $20,000 mortgage on the home, requiring monthly payment covering interest to date plus a portion of the principal. Which of the following statements about the monthly payment is correct?

A: The wife must pay the full monthly payment.
B: The wife must pay a portion of the monthly payment based on an apportionment of the value between Wanda's life estate and the daughter's remainder.
C: The wife must pay the portion of the monthly payment which represents interest.
D: The daughter must pay the full monthly payment.

The explanation for the answer is:

Answer C is correct. The husband's conveyance created a life estate in the wife and a vested remainder in the daughter. As a life tenant, the wife has a duty not to commit voluntary or permissive waste relevant to the property during her life tenancy. A failure to keep the property in repair, pay taxes on the property, or pay interest on any mortgage on the property all constitute permissive waste. Although the wife's duty not to commit permissive waste requires her to pay the interest on the mortgage, she has no obligation to pay the principal. Therefore, answer C is correct. Answer A is incorrect because the wife has no obligation to pay down the principal. Answer B is incorrect because the comparative value of the estates is irrelevant to the life tenant's duties - they will remain unchanged regardless of the value. Answer D is incorrect because the daughter is only liable for the principal portion of the payments, not the interest portion that the wife is obligated to pay.

Question 238 - Real Property - Ownership

The question was:

A testator owned Hilltop in fee simple. By his will, he devised as follows: "Hilltop to such of my grandchildren who shall reach the age of 21; and by this provision I intend to include all grandchildren whenever born." At the time of his death, the testator had three children and two grandchildren.

Courts hold such a devise valid under the common-law Rule Against Perpetuities. What is the best explanation of that determination?

A: All of the testator's children would be measuring lives.
B: The rule of convenience closes the class of beneficiaries when any grandchild reaches the age of 21.
C: There is a presumption that the testator intended to include only those grandchildren born prior to his death.
D: There is a subsidiary rule of construction that dispositive instruments are to be interpreted so as to uphold interests rather than to invalidate them under the Rule Against Perpetuities.

The explanation for the answer is:

Answer A is correct. To be valid under the Rule Against Perpetuities, all interests must vest within a life-in-being plus twenty-one years. In this case, the will devises the property to all of the testator's grandchildren who reach age twenty-one. If any one child of the testator were the measuring life used to determine if the RAP is violated, the devise would fail. However, all the testator's children's lives can be used as measuring lives. Since the testator is dead, he will have no more children. Consequently, the youngest possible grandchild will turn twenty-one within twenty-one years of the death of the last child. Therefore, the devise does not violate the Rule Against Perpetuities.

Answer B is incorrect because the rule of convenience is a rule of construction based upon a transferor's intent. Here the grantor has stated that he wishes to include all grandchildren "whenever born" so the rule of convenience would not be applied in this case. C is incorrect because the presumption is trumped by the grantor's explicit instruction to include all grandchildren "whenever born." D is incorrect because generally if the Rule Against Perpetuities could be violated, then the devise is invalid.

Question 239 - Real Property - Ownership

The question was:

A testator owned Hilltop in fee simple. By his will, he devised as follows: "Hilltop to such of my grandchildren who shall reach the age of 21; and by this provision I intend to include all grandchildren whenever born." At the time of his death, the testator had three children and two grandchildren.

Which of the following additions to or changes in the facts above would produce a violation of the common-law Rule Against Perpetuities?

A: A posthumous child was born to the testator.
B: The testator's will expressed the intention to include all afterborn grandchildren in the gift.
C: The instrument was an *inter vivos* conveyance rather than a will.
D: The testator had no grandchildren living at the time of his death.

The explanation for the answer is:

Answer C is correct. To be valid under the Rule Against Perpetuities (RAP), all interests must vest within a life-in-being plus twenty-one years. In this case, if the testator were to attempt to make this an *inter vivos* conveyance, RAP would be violated. For RAP purposes, no person is considered too old to have children. If this was an *inter vivos* conveyance, the testator could have a child ("A") after the conveyance, and A could have an offspring ("B") after all of A's siblings have died. In this case, B's interest would not vest within a life-in-being (at the time of the conveyance) plus twenty-one years and RAP would be violated. Answers A, B, and D are all incorrect, as none would produce a RAP violation.

Question 261 - Real Property - Contract

The question was:

A seller and a buyer execute an agreement for the sale of real property on September 1, 2001. The jurisdiction in which the property is located recognized the principle of equitable conversion and has no statute pertinent to this problem.

Assume that the seller dies before closing and his will leaves his personal property to a friend and his real property to his sister. There being no breach of the agreement by either party, which of the following is correct?

A: Death, an eventuality for which the parties could have provided, terminates the agreement if they did not so provide.
B: The sister is entitled to the proceeds of the sale when it closes, because the doctrine of equitable conversion does not apply to these circumstances.
C: The friend is entitled to the proceeds of the sale when it closes.
D: Title was rendered unmarketable by the seller's death.

The explanation for the answer is:

Choice C is correct. In the case of a real property conveyance, the doctrine of equitable conversion dictates that if a seller dies after a contract has been formed but before it has been completed, the affected real property will pass to the taker of the seller's real property. Subsequently, at closing the property must be conveyed to the buyer, after which the proceeds from the sale will pass to the taker of the seller's personal property. In this case, when the seller died, he left his real property to the sister and his personal property to the friend. Therefore, after the closing the proceeds of the sale will pass to the friend.

Answer A is incorrect because an equitable conversion has occurred. Answer B is incorrect because, as stated above, equitable conversion does apply here. Answer D is incorrect because a seller's death has no relevance to marketability of title.

Question 262 - Real Property - Contract

The question was:

A seller and a buyer execute an agreement for the sale of real property on September 1, 2001. The jurisdiction in which the property is located recognized the principle of equitable conversion and has no statute pertinent to this problem.

Assume that the buyer dies before closing, there being no breach of the agreement by either party. Which of the following is appropriate in most jurisdictions?

A: The buyer's heir may specifically enforce the agreement.
B: The seller has the right to return the down payment and cancel the contract.
C: Death terminates the agreement.
D: Any title acquired would be unmarketable by reason of the buyer's death.

The explanation for the answer is:

Answer A is correct. In the case of a real property conveyance, the doctrine of equitable conversion dictates that if a buyer dies after a contract has been formed but before it has been completed, the taker of the buyer's real property can demand a conveyance of the real property. The purchase price for the conveyance must be paid by the taker of the buyer's real property. Therefore, in this case the buyer may specifically enforce the agreement.

Answer B is incorrect because the seller is obligated to complete the transaction - the buyer already equitably "owns" the property. Answer C is incorrect because, as stated above, the death of a party is addressed by equitable conversion principles. Answer D is incorrect because a buyer's death has no relevance to marketability of title.

Question 274 - Real Property - Rights in Land

The question was:

A landowner holds title in fee simple to a tract of 1,500 acres. He desires to develop the entire tract as a golf course, country club, and residential subdivision. He contemplates forming a corporation to own and to operate the golf course and country club; the stock in the corporation will be distributed to the owners of lots in the residential portions of the subdivision, but no obligation to issue the stock is to ripen until all the residential lots are sold. The price of the lots is intended to return enough money to compensate the landowner for the raw land, development costs (including the building of the golf course and the country club facilities), and developer's profit, if all of the lots are sold. The landowner's market analyses indicate that he must create a scheme of development that will offer prospective purchasers (and their lawyers) a very high order of assurance that several aspects will be clearly established:

1. Aside from the country club and golf course, there will be no land use other than for residential use and occupancy in the 1,500 acres.

2. The residents of the subdivision will have unambiguous rights and access to the club and golf course facilities.

3. Each lot owner must have an unambiguous right to transfer his lot to a purchaser with all original benefits.

4. Each lot owner must be obligated to pay annual dues to a pro rata share (based on the number of lots) of the club's annual operating deficit (whether or not such owner desires to make use of club and course facilities).

In the context of all aspects of the scheme, which of the following will offer the best chance of implementing the requirement that each lot owner pay annual dues to support the club and golf course?

A: Covenant
B: Easement
C: Mortgage
D: Personal contractual obligation by each purchaser

The explanation for the answer is:

A is the correct answer and can be reached through the process of elimination. C can be eliminated immediately. A mortgage is a financial agreement and will not run with the land once the mortgage is satisfied. Likewise, D can be removed. The question asks for the best chance of implementation, which would not be the case in a situation where each land purchaser was able to individually negotiate his or her contractual obligation. In addition, the obligation would only bind the initial parties and would not transfer along with the property, should it be sold. B is not the best answer because, while an easement can run with the land and bind future owners of that land, easements cannot generally be used to require the burdened party to perform affirmative acts. In addition, an easement allows access to the land of the owner, by the holder of the easement, and the creation/operation of a golf course would not necessarily touch and concern the land.

This leaves A as the best response. A covenant can be inserted into the property deeds, binding any subsequent purchasers. It can control actions and create affirmative duties. And, as part of a common scheme, which this fact pattern indicates, any member of that common scheme is entitled to enforce the covenant. Thus, A would be the best choice. B, C and D are incorrect.

Question 275 - Real Property - Rights in Land

The question was:

A landowner holds title in fee simple to a tract of 1,500 acres. He desires to develop the entire tract as a golf course, country club, and residential subdivision. He contemplates forming a corporation to own and to operate the golf course and country club; the stock in the corporation will be distributed to the owners of lots in the residential portions of the subdivision, but no obligation to issue the stock is to ripen until all the residential lots are sold. The price of the lots is intended to return enough money to compensate the landowner for the raw land, development costs (including the building of the golf course and the country club facilities), and developer's profit, if all of the lots are sold. The landowner's market analyses indicate that he must create a scheme of development that will offer prospective purchasers (and their lawyers) a very high order of assurance that several aspects will be clearly established:

1. Aside from the country club and golf course, there will be no land use other than for residential use and occupancy in the 1,500 acres.

2. The residents of the subdivision will have unambiguous rights and access to the club and golf course facilities.

3. Each lot owner must have an unambiguous right to transfer his lot to a purchaser with all original benefits.

4. Each lot owner must be obligated to pay annual dues to a pro rata share (based on the number of lots) of the club's annual operating deficit (whether or not such owner desires to make use of club and course facilities).

Of the following, the greatest difficulty that will be encountered in establishing the scheme is that

A: any judicial recognition will be construed as state action which, under current doctrines, raises a substantial question whether such action would be in conflict with the Fourteenth Amendment.
B: the scheme, if effective, renders title unmarketable.
C: one or more of the essential aspects outlined by the landowner will result in a restraint on alienation.
D: there is a judicial reluctance to recognize an affirmative burden to pay money in installments and over an indefinite period as a burden which can be affixed to bind future owners of land.

The explanation for the answer is:

D is the correct answer. The landowner's plan does require payment of annual dues for an indefinite period of time. Since courts are reluctant to recognize an affirmative burden to pay money over an indefinite period of time, this will be the most significant hurdle for the landowner's plan.

A is incorrect because the plan does not raise any significant equal protection or due process concerns, so judicial recognition would only trigger a rational basis review. Therefore, judicial recognition would not be a significant difficulty in establishing the scheme.

For B to be correct, something in the plan must render title unmarketable. Marketable title simply means that title must be reasonably free from doubt such that it is unlikely that the transfer of title will subject the new owner to litigation. Not all encumbrances render title unmarketable; rather, slight encumbrances that do not interfere with the use and enjoyment of the land do not render title unmarketable and purchasers may elect to take title subject to such encumbrances. The encumbrances imposed by the plan are beneficial, and do not reduce the value of the property. Therefore, they would not render the title unmarketable.

C is incorrect because no part of the plan inhibits the ability of a landowner to sell. Instead, the plan specifically states that owners will have "an unambiguous right to transfer."

Question 297 - Real Property - Rights in Land

The question was:

Two neighbors are equal tenants in common of a strip of land 10 feet wide and 100 feet deep which lies between the lots on which their respective homes are situated. Both neighbors need the use of the 10-foot strip as a driveway; and each fears that a new neighbor might seek partition and leave him with an unusable 5-foot strip.

The best advice about how to solve their problem is

A: a covenant against partition.
B: an indenture granting cross easements in the undivided half interest of each.
C: partition into two separate 5-foot wide strips and an indenture granting cross easements.
D: a trust to hold the strip in perpetuity.

The explanation for the answer is:

Answer C is correct. The best choice from the answers presented to insure that the neighbors can both maintain their use of the commonly held driveway is to partition that driveway and grant cross easements to each other. Answer A is incorrect because a tenant always maintains an inherent right to seek partition. Answer B is incorrect because an easement must be in a specifically identified *area* of land, rather than in a specifically identified interest in land. Answer D is incorrect because such a trust constitutes a permanent restraint on each party's right to alienation.

Question 302 - Real Property - Titles

The question was:

By way of a gift, a father executed a deed naming his daughter as grantee. The deed contained descriptions as follows:

(1) All of my land and dwelling known as 44 Main Street, Midtown, United States, being one acre.

(2) All that part of my farm, being a square with 200-foot sides, the southeast corner of which is in the north line of my neighbor.

The deed contained covenants of general warranty, quiet enjoyment, and right to convey.

The father handed the deed to his daughter who immediately returned it to her father for safekeeping. Her father kept it in his safe deposit box. The deed was not recorded.

The property at 44 Main Street covered 7/8 of an acre of land, had a dwelling and a garage situated thereon, and was subject to a right of way, described in prior deeds, in favor of a second neighbor. The father owned no other land on Main Street. This neighbor had not used the right of way for ten years and it was not visible on inspection of the property.

The description of 44 Main Street was

A: sufficient, because the discrepancy in area is not fatal.
B: not sufficient, because it contained no metes and bounds.
C: not sufficient, because the acreage given was not correct.
D: not sufficient, because a deed purporting to convey more than a grantor owns is void *ab initio*.

The explanation for the answer is:

A is correct. The description of land found in a deed only needs to be specific enough to allow a party to identify and locate the property. The description does not need to be made in "metes and bounds," but if it is, that metes and bounds description will be given effect, even if contradicted by other descriptive language or characterizations in the deed. Furthermore, while the description need not be exact (and may even contain minor discrepancies), if it is not sufficient to allow location the property, it will be considered inadequate and any attempted transfer of rights using that deed will be void for vagueness. In this case, the description quoted in the facts is sufficient, so answer A is correct. Answer B is incorrect because metes and bounds are not required. Answers C and D are incorrect because, as stated above, minor discrepancies are permissible.

Question 303 - Real Property - Titles

The question was:

By way of a gift, a father executed a deed naming his daughter as grantee. The deed contained descriptions as follows:

(1) All of my land and dwelling known as 44 Main Street, Midtown, United States, being one acre.

(2) All that part of my farm, being a square with 200-foot sides, the southeast corner of which is in the north line of my neighbor.

The deed contained covenants of general warranty, quiet enjoyment, and right to convey.

The father handed the deed to his daughter who immediately returned it to her father for safekeeping. Her father kept it in his safe deposit box. The deed was not recorded.

The property at 44 Main Street covered 7/8 of an acre of land, had a dwelling and a garage situated thereon, and was subject to a right of way, described in prior deeds, in favor of a different neighbor. The father owned no other land on Main Street. This neighbor had not used the right of way for ten years and it was not visible on inspection of the property.

The description of part of the father's farm

A: is insufficient because consideration had not been paid.
B: is sufficient because no ambiguity therein appears on the face of the deed.
C: could be enforced because the deed contained a covenant of seisin.
D: is insufficient because of vagueness.

The explanation for the answer is:

D is correct. The description of land found in a deed only needs to be specific enough to allow a party to identify and locate the property. The description does not need to be made in "metes and bounds," but if it is, that metes and bounds description will be given effect, even if contradicted by other descriptive language or characterizations in the deed. Further, while the description need not be exact (and may even contain minor discrepancies), if it is not sufficient to allow location of the property, it will be considered insufficient and any attempted transfer of rights using that deed will be void for vagueness. In this case, the description in the deed relating to the farm is too vague to allow anyone to locate the property because the southeast corner of the property could be located at any point along the neighbor's north line. Because the description is insufficient to allow location of the property, it is too vague and answer D is correct. Answers A and C are incorrect because consideration and covenants are irrelevant to this determination because the deed was not a valid grant. Answer B is incorrect because a deed can be unambiguous and still be too vague.

Question 314 - Real Property - Rights in Land

The question was:

An owner held 500 acres in fee simple absolute. In 1990 the owner platted and obtained all required governmental approvals of two subdivisions of 200 acres each.

In 1990 and 1991 commercial buildings and parking facilities were constructed on one, Royal Center, in accordance with the plans disclosed by the plat for each subdivision. Royal Center continues to be used for commercial purposes.

The plat of the other, Royal Oaks, showed 250 lots, streets, and utility and drainage easements. All of the lots in Royal Oaks were conveyed during 1990 and 1991. The deeds contained provisions, expressly stated to be binding upon the grantee, his heirs and assigns, requiring the lots to be used only for single-family, residential purposes until 2015. The deeds expressly stated that these provisions were enforceable by the owner of any lot in the Royal Oaks subdivision.

At all times since 1979, the 200 acres of Royal Center have been zoned for shopping center use, and the 200 acres in Royal Oaks have been zoned for residential use in a classification which permits both single-family and multiple-family use.

In an appropriate attack upon the limitation to residential use by single families, if the evidence disclosed no fact in addition to those listed above, the most probable judicial resolution would be that

A: there is no enforceable restriction because judicial recognition constitutes state action which is in conflict with the Fourteenth Amendment to the United States Constitution.
B: there is no enforceable restriction because of the owner's conflict of interest in that he did not make the restriction applicable to the 100 acres he retains.
C: the restriction in use set forth in the deeds will be enforced at the suit of any present owner of a lot in Royal Oaks residential subdivision.
D: any use consistent with zoning will be permitted but that any such uses that are in conflict with the restrictions in the deeds will give rise to a right to damages from the owner or the owner's successor.

The explanation for the answer is:

C is correct. The restrictions described in the facts constitute equitable servitudes. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantee had notice of the servitude, and 3) that the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds indicate the restriction is intended to bind subsequent grantees. The recording of those deeds would provide later purchasers with record notice of the restriction. And a restriction on what can be built on the land clearly meets the requirement that the restriction touch and concern that land, so an enforceable equitable servitude was created. For an equitable servitude to bind an entire subdivision, however, it must be found in the common building plan for that subdivision. If it is, then anyone who owns a plot of land within the subdivision is bound by the restrictions and may file suit to enforce those restrictions against other owners. In this case, the facts state that a subdivision plan outlining the restrictions was approved by the local government and would apply to all plats within the subdivision. Because the restrictions were found in the common plan, owners may sue to enforce the restrictions, and answer C is correct.

Answer A is an incorrect because the restriction in this fact pattern is not a restrictive covenant based on a suspect class. Answer B is incorrect because the owner was not required to include all the land he owned within the subdivision. Answer D is incorrect because zoning compliance is irrelevant to determining whether a restriction binds an entire subdivision.

Question 315 - Real Property - Rights in Land

The question was:

A landowner held 500 acres in fee simple absolute. In 1990 the owner platted and obtained all required governmental approvals of two subdivisions of 200 acres each.

In 1990 and 1991 commercial buildings and parking facilities were constructed on one, Royal Center, in accordance with the plans disclosed by the plat for each subdivision. Royal Center continues to be used for commercial purposes.

The plat of the other, Royal Oaks, showed 250 lots, streets, and utility and drainage easements. All of the lots in Royal Oaks were conveyed during 1990 and 1991. The deeds contained provisions, expressly stated to be binding upon the grantee, his heirs and assigns, requiring the lots to be used only for single-family, residential purposes until 2015. The deeds expressly stated that these provisions were enforceable by the owner of any lot in the Royal Oaks subdivision.

At all times since 1979, the 200 acres of Royal Center have been zoned for shopping center use, and the 200 acres in Royal Oaks have been zoned for residential use in a classification which permits both single-family and multiple-family use.

Assume that the owner now desires to open his remaining 100 acres as a residential subdivision of 125 lots (with appropriate streets, etc.). He has, as an essential element of his scheme, the feature that the restrictions are identical with those he planned for the original Royal Oaks residential subdivision and, further, that lot owners in Royal Oaks should be able to enforce (by lawsuits) restrictions on the lots in the 100 acres. The zoning for the 100 acres is identical with that for the 200 acres of Royal Oaks residential subdivision. Which of the following best states the chance of success for his scheme?

A: He can restrict use only to the extent of that imposed by zoning (that is, to residential use by not more than four dwelling units per lot).
B: He cannot restrict the 100 acres to residential use because of the conflicting use for retail commercial purposes in the 200 acres comprising the shopping center.
C: He cannot impose any enforceable restriction to residential use only.
D: Any chance of success depends upon the 100 acres being considered by the courts as part of a common development scheme which also includes the 200 acres of Royal Oaks.

The explanation for the answer is:

D is correct. The restrictions described in the facts constitute equitable servitudes. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantee had notice of the servitude, and 3) that the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds indicates that the restriction is intended to bind subsequent grantees. The recording of those deeds would provide later purchasers with record notice of the restriction. And a restriction on what can be built on the land clearly meets the requirement that the restriction touch and concern that land, so an enforceable equitable servitude was created. For an equitable servitude to bind an entire subdivision, however, it must be found in the common building plan for that subdivision. If it is, then anyone who owns a plot of land within the subdivision is bound by the restrictions and may file suit to enforce those restrictions against other owners.

In this case, the facts state that a subdivision plan outlining restrictions that would apply to all plats within it was approved by the local government. But that subdivision plan was only for the original 200 acres of Royal Oaks. The only way that owners in the new 100 acre development will be able to bind owners in the original 200 acres, and vice-versa, is if they are all viewed as living in an area developed under a common plan. Therefore, answer D is correct, and the owner will only succeed if he convinces a court that the entire 300 acres is a subdivision developed under a common plan.

Answer A is incorrect because zoning is irrelevant to determining whether the restrictions are binding. Answer

Question 315 - Real Property - Rights in Land

B is incorrect because there are two separate subdivisions, and the owner is only trying to expand one of them. Answer C is incorrect because there is no explicit limit on the types of restriction a subdivision may impose.

Question 326 - Real Property - Contract

The question was:

A seller and a buyer entered into a written contract for the sale and purchase of land which was complete in all respects except that no reference was made to the quality of title to be conveyed. Which of the following will result?

A: The contract will be unenforceable.
B: The seller will be required to convey a marketable title.
C: The seller will be required to convey only what he owned on the date of the contract.
D: The seller will be required to convey only what he owned at the date of the contract plus whatever additional title rights he may acquire prior to the closing date.

The explanation for the answer is:

B is correct. The warranty of marketable title is implied in all land sales contracts. This warranty requires the seller to provide a marketable title to the buyer on (but not before) the closing date. To be considered "marketable," the title must be free of encumbrances, such as mortgages, restrictions, covenants, easements or other limiting provisions that are not explicitly identified in the contract. Further, in establishing whether an encumbrance exists with regard to local codes or ordinances, it is important to distinguish between building codes and zoning laws. A property being in violation of the building code is not considered an encumbrance, and title to that building is marketable. In contrast, where a property is in violation of zoning laws, the violation is considered an encumbrance and the title is unmarketable.

In this case, the warranty of marketable title will be implied in the seller and buyer's contract, so answer B is correct. Answer A is incorrect because there is no requirement that the warranty be explicitly referenced in the deed. Answers C and D are incorrect because by entering the contract, what the seller has warranted is simply that he will convey marketable title on the closing date.

Question 331 - Real Property - Ownership

The question was:

In 1975, the owner of both Blackacre and Whiteacre executed and delivered two separate deeds by which he conveyed the two tracts of land as follows: Blackacre was conveyed "To my neighbor and his heirs as long as it is used exclusively for residential purposes, but if it is ever used for other than residential purposes, to the American Red Cross." Whiteacre was conveyed "To my girlfriend and her heirs as long as it is used exclusively for residential purposes, but if it is used for other than residential purposes prior to 1995, then to the Salvation Army." In 1980, the owner died, leaving a valid will by which he devised all his real estate to his brother. The will had no residuary clause. The owner was survived by his brother and by his daughter, who was the owner's sole heir.

The common law rule against perpetuities applies in the state where the land is located, and the state also has a statute providing that, "All future estates and interests are alienable, descendible, and devisable in the same manner as possessory estates and interests."

In 1985 the neighbor and daughter entered into a contract with a buyer whereby the neighbor and daughter contracted to sell Blackacre to the buyer in fee simple. After examining title, the buyer refused to perform on the ground that the neighbor and daughter could not give good title. The neighbor and daughter joined in an action against the buyer for specific performance. Prayer for specific performance will be

A: granted, because the neighbor and daughter together own a fee simple absolute in Blackacre.
B: granted, because the neighbor alone owns the entire fee simple in Blackacre.
C: denied, because the brother has a valid interest in Blackacre.
D: denied, because the American Red Cross has a valid interest in Blackacre.

The explanation for the answer is:

C is the correct answer. This question illustrates the advantage of reading the call of the question before the fact pattern. The issue only concerns Blackacre; Whiteacre is a red-herring that is meant to confuse and distract. The executory interest in Blackacre's deed violates the rule against perpetuities (RAP) because its conditions will not vest within 21 years after some life in being at the creation of the interest. There is no measuring life in Blackacre's condition and no means to ensure the conditions will vest or fail in a specific time frame. Consequently, the second clause granting the land to the Red Cross will be stricken, so answer D is incorrect.

Answer B is incorrect because the neighbor will still hold Blackacre in fee simple determinable, but the grantor will take the possibility of reverter, which is not subject to RAP, whereas Red Cross's executory interest is. The twist is that the owner devised ownership of all real estate to his brother. The brother effectively became the grantor, therefore, which gives him the possibility of reverter in Blackacre. Answer A is incorrect because the owner's daughter, as the owner's heir, has no interest in property that was specifically devised to the owner's brother. She cannot join with the neighbor to sell Blackacre to the buyer; only the brother can. Therefore, A, B and D are incorrect.

Question 332 - Real Property - Ownership

The question was:

In 1975, the owner of both Blackacre and Whiteacre executed and delivered two separate deeds by which he conveyed the two tracts of land as follows: Blackacre was conveyed "To my neighbor and his heirs as long as it is used exclusively for residential purposes, but if it is ever used for other than residential purposes, to the American Red Cross." Whiteacre was conveyed "To my girlfriend and her heirs as long as it is used exclusively for residential purposes, but if it is used for other than residential purposes prior to 1995, then to the Salvation Army." In 1980, the owner died, leaving a valid will by which he devised all his real estate to his brother. The will had no residuary clause. The owner was survived by his brother and by his daughter, who was the owner's sole heir.

The common law rule against perpetuities applies in the state where the land is located, and the state also has a statute providing that, "All future estates and interests are alienable, descendible, and devisable in the same manner as possessory estates and interests."

In 1976 the interest of the American Red Cross in Blackacre could be best described as a

A: valid contingent remainder.
B: void executory interest.
C: valid executory interest.
D: void contingent remainder.

The explanation for the answer is:

B is correct; this is a void executory interest. The words "as long as" identify Blackacre's deed as a fee simple determinable with an executory interest in the Red Cross. Executory interests are subject to the rule against perpetuities (RAP). If it is not certain that a reversionary interest will vest within 21 years from the end of the lives in being at the time of the creation of the interest, the interest is considered void and the court will strike the offending clause from the granting instrument. The key words "but if ever" place the time frame of the executory interest into violation.

Answer C is incorrect because the neighbor will still hold a fee simple determinable in Blackacre, but the grantor will have a possibility of reverter (which is not subject to the RAP) instead of the Red Cross. Answers A and D are incorrect because this is not an issue of a contingent remainder. The wording that identifies a contingent remainder would be "(To A for life) and then to B and his heirs if B survives A." Blackacre's deed is a fee simple determinable with a void executory interest.

Question 344 - Real Property - Rights in Land

The question was:

An owner owned in fee simple three adjoining vacant lots fronting on a common street in a primarily residential section of a city which had no zoning laws. The lots were identified as Lots 1, 2, and 3. The owner conveyed Lot 1 to a man and Lot 2 to a woman. The owner retained Lot 3, which consisted of three acres of woodland. The woman, whose lot was between the other two, built a house on her lot.

The man erected a house on his lot. The owner made no complaint to either the man or woman concerning the houses they built. After both the man and woman had completed their houses, the two of them agreed to and did build a common driveway running from the street to the rear of their respective lots. The driveway was built on the line between the two houses so that one-half of the way was located on each lot. The man and woman exchanged right-of-way deeds by which each of them conveyed to the other, his heirs and assigns, an easement to continue the right of way. Both deeds were properly recorded. After the man and woman had lived in their respective houses for thirty years, a new public street was built bordering on the rear of Lots 1, 2, and 3. The man informed the woman that, since the new street removed the need for their common driveway, he considered the right-of-way terminated; therefore, he intended to discontinue its use and expected the woman to do the same.

In an action brought by the woman to enjoin the man from interfering with her continued use of the common driveway between the two lots, the decision should be for

A: the man, because the termination of the necessity for the easement terminated the easement.
B: the man, because the continuation of the easement after the change of circumstances would adversely affect the marketability of both lots without adding any commensurate value to either.
C: the woman, because an incorporeal hereditament lies in grant and cannot be terminated without a writing.
D: the woman, because the removal of the need for the easement created by express grant does not affect the right to the easement.

The explanation for the answer is:

Answer D is correct, the woman's easement will be sustained. The easement described in the facts is an express easement. Unlike easements created by necessity, which expire as soon as the necessity ends, an express easement is assumed to have a perpetual duration unless the grant specifically limits the interest. Since the right of way easement was an express grant without a specific limit, the expiration of the necessity does not terminate the easement. Therefore, answer D is correct.

Answer A is incorrect because the easement was an express grant. Answer B is incorrect because marketability is irrelevant to the determination of easement rights in this situation. Answer C is incorrect as a misstatement of the law; the easement could be terminated by a complete unity of ownership of the two properties.

Question 345 - Real Property - Rights in Land

The question was:

An owner owned in fee simple three adjoining vacant lots fronting on a common street in a primarily residential section of a city which had no zoning laws. The lots were identified as Lots 1, 2, and 3. The owner conveyed Lot 1 to a man and Lot 2 to a woman. The owner retained Lot 3, which consisted of three acres of woodland. The woman, whose lot was between the other two, built a house on her lot. The woman's house included a large window on the side facing Lot 3. The window provided a beautiful view from her living room, thereby adding value to the woman's house.

The man erected a house on his lot. The owner made no complaint to either the man or woman concerning the houses they built. After both the man and woman had completed their houses, the two of them agreed to and did build a common driveway running from the street to the rear of their respective lots. The driveway was built on the line between the two houses so that one-half of the way was located on each lot. The man and woman exchanged right-of-way deeds by which each of them conveyed to the other, his heirs and assigns, an easement to continue the right of way. Both deeds were properly recorded. After the man and woman had lived in their respective houses for thirty years, a new public street was built bordering on the rear of Lots 1, 2, and 3. The man informed the woman that, since the new street removed the need for their common driveway, he considered the right-of-way terminated; therefore, he intended to discontinue its use and expected the woman to do the same. At about the same time, the owner began the erection of a six-story apartment house on Lot 3. If the apartment house is completed, it will block the view from the woman's window and will substantially reduce the value of her lot.

In an action brought by the woman to enjoin the owner from erecting the apartment building in such a way as to obstruct the view from the woman's living room window, the decision should be for

A: the woman, because the owner's proposed building would be an obstruction of the woman's natural right to an easement for light and air.
B: the woman, because she was misled by the owner's failure to complain when the woman was building her house.
C: the woman, because the woman did not know of the the owner's intention to erect such a building at the time of the owner's conveyance to her.
D: the owner, because the woman has no easement for light, air, or view.

The explanation for the answer is:

Answer D is correct. While a landowner possesses a number of rights with regard to their property, as well as the areas above and below it, there are no rights to sunlight, fresh air, or view. As such, the woman has no legal basis for a cause of action against the owner. Answer A is incorrect because the woman has no natural right to an easement for light and air, so there can be no obstruction of that right. Answer B is incorrect because reliance is irrelevant to determination of the woman's rights. Answer C is incorrect because intent is likewise irrelevant to determining those rights.

Question 367 - Real Property - Mortgages

The question was:

An owner conveyed Greenacre, her one-family residence, to "my brother for life, remainder to my sister, her heirs and assigns, subject, however, to First Bank's mortgage thereon." There was an unpaid balance on the mortgage of $10,000, which is payable in $1,000 annual installments plus interest at 6 percent on the unpaid balance, with the next payment due on July 1. The brother is now occupying Greenacre. The reasonable rental value of the property exceeds the sum necessary to meet all current charges. There is no applicable statute.

Under the rules governing contributions between life tenants and remaindermen, how should the burden for payment be allocated?

A: The sister must pay the principal payment, but the brother must pay the interest to First Bank.
B: The sister must pay both the principal and interest payments to First Bank.
C: The brother must pay both the principal and interest payments to first Bank.
D: The brother must pay the principal payment, but the sister must pay the interest to First Bank.

The explanation for the answer is:

Answer A is correct. The facts indicate that the brother has a life estate and the sister has a vested remainder. The brother, as a life tenant, has a duty not to commit voluntary or permissive waste relevant to the property during his life tenancy. A failure to keep the property in repair, pay taxes on the property, or pay interest on any mortgage on the property all constitute permissive waste. Although the brother's duty not to commit permissive waste requires him to pay interest on the mortgage, he has no obligation to pay the principal. Instead, the holder of the remainder, the sister, is responsible for the principal payments. Therefore, answer A is correct, while answers B, C, and D are incorrect.

Question 380 - Real Property - Ownership

The question was:

A sister and brother, as lessees, signed a valid lease for a house. The landlord, duly executed the lease and delivered possession of the premises to the lessees.

During the term of the lease, the brother verbally invited his friend to share the house with the lessees. The friend agreed to pay part of the rent to the landlord, who did not object to this arrangement, despite a provision in the lease that provided that "any assignment, subletting or transfer of any rights under this lease without the express written consent of the landlord is strictly prohibited, null, and void." The sister objected to the friend's moving in, even if the friend were to pay a part of the rent.

When the friend moved in, the sister brought an appropriate action against the landlord, the brother, and the friend for a declaratory judgment that the brother had no right to assign. The brother's defense was that he and the sister were tenants in common for a term of years, and that he, the brother, had a right to assign a fractional interest in his undivided one-half interest. In this action, the sister will

A: prevail, because a cotenant has no right to assign all or any part of a leasehold without the consent of all interested parties.
B: prevail, because the lease provision prohibits assignment.
C: not prevail, because she is not the beneficiary of the non-assignment provision in the lease.
D: not prevail, because her claim amounts to a void restraint on alienation.

The explanation for the answer is:

C is correct. An assignment of a lease by a tenant occurs where the tenant transfers all his rights and duties under a lease to another party (an "assignee") for the entire length of time remaining on the lease. By contrast, a sublease is a transfer by a tenant to another party (a "sublessee") for a time period shorter than the time remaining on the lease. A landlord is free to place limits on alienation within the terms of the lease, thereby preventing its tenant from assigning, subletting, or both. Any such restriction will be strictly construed according to its explicit terms, and the landlord is considered the beneficiary of the clause's benefits. Further, if the landlord prohibited the tenant from assigning/subletting in the terms of the lease, but subsequently gave the tenant permission to do so despite the provision, that permission serves to forever waive the non-assignment/non-sublet clause. In this case, the landlord has waived the non-assignment/non-sublet provisions of the lease by accepting rent payments from the friend. Because the landlord is the beneficiary of that provision, the sister has no right to sue to enforce its terms, and answer C is correct.

Answer A is incorrect because a tenant needs only the landlord's permission to assign or sublet. Answer B is incorrect because the provision was waived by the landlord's acceptance of the friend's payments. Answer D is incorrect because a landlord is free to place such a limit on alienation within the terms of the lease.

Question 381 - Real Property - Contract

The question was:

The owner of Newacre executed and delivered to a power company a right-of-way deed for the building and maintenance of an overhead power line across Newacre. The deed was properly recorded. Newacre then passed through several intermediate conveyances until it was conveyed to a new owner about ten years after the date of the right-of-way deed. All the intermediate deeds were properly recorded, but none of them mentioned the right-of-way.

The new owner entered into a written contract to sell Newacre to a developer. By the terms of the contract, the new owner promised to furnish an abstract of title to the developer. The new owner contracted directly with an abstract company to prepare and deliver an abstract to the developer, and the abstract company did so. The abstract omitted the right-of-way deed. The developer delivered the abstract to his attorney and asked the attorney for an opinion as to title. The attorney signed and delivered to the developer a letter stating that, from the attorney's examination of the abstract, it was his "opinion that the new owner had a free and unencumbered marketable title to Newacre."

The new owner conveyed Newacre to the developer by a deed which included covenants of general warranty and against encumbrances. The developer paid the full purchase price. After the developer had been in possession of Newacre for more than a year, he learned about the right-of-way deed. The new owner, the developer, the abstract company, and the developer's attorney were all without actual knowledge of the existence of the right-of-way to the conveyance from the new owner to the developer.

If the developer sues the abstract company for damages caused to the developer by the presence of the right-of-way, the most likely result will be a decision for

A: the developer, because the developer was a third-party creditor beneficiary of the contract between the new owner and the abstract company.
B: the developer, because the abstract prepared by the abstract company constitutes a guarantee of the developer's title to Newacre.
C: the abstract company, because the abstract company had no knowledge of the existence of the right-of-way.
D: the abstract company, because there was no showing that any fraud was practiced upon the developer.

The explanation for the answer is:

A is the correct answer and can be reached by the process of elimination. C and D can be eliminated immediately; the abstract company had the duty to exercise competence in its creation of the abstract. The abstract company will not be able to use lack of knowledge or lack of fraud in a defense against a claim of professional negligence. B is also incorrect. The abstract itself was not the guarantee. The new owner's warranty against encumbrances was the guarantee. The new owner relied upon the abstract company's work, however, in making that guarantee. Likewise, the developer relied upon the information in the abstract when he accepted the property and paid full price.

A is the best answer because it addresses the issue of equitable conversion; the developer had a valid and binding agreement with the new owner to convey the land and had certain pre-possessory ownership rights to the property as a result, including third party beneficiary rights to actions the new owner took that were intended to benefit the developer, such as the creation of an abstract of title. Thus, B, C, and D are incorrect.

Question 382 - Real Property - Titles

The question was:

The owner of Newacre executed and delivered to a power company a right-of-way deed for the building and maintenance of an overhead power line across Newacre. The deed was properly recorded. Newacre then passed through several intermediate conveyances until it was conveyed to a new owner about ten years after the date of the right-of-way deed. All the intermediate deeds were properly recorded, but none of them mentioned the right-of-way.

The new owner entered into a written contract to sell Newacre to a developer. By the terms of the contract, the new owner promised to furnish an abstract of title to the developer. The new owner contracted directly with an abstract company to prepare and deliver an abstract to the developer, and the abstract company did so. The abstract omitted the right-of-way deed. The developer delivered the abstract to his attorney and asked the attorney for an opinion as to title. The attorney signed and delivered to the developer a letter stating that, from the attorney's examination of the abstract, it was his "opinion that the new owner had a free and unencumbered marketable title to Newacre."

The new owner conveyed Newacre to the developer by a deed which included covenants of general warranty and against encumbrances. The developer paid the full purchase price. After the developer had been in possession of Newacre for more than a year, he learned about the right-of-way deed. The new owner, the developer, the abstract company, and the developer's attorney were all without actual knowledge of the existence of the right-of-way to the conveyance from the new owner to the developer.

If the developer sues the new owner because of the presence of the right-of-way, the most likely result will be a decision for

A: the developer, because the new owner is liable for his negligent misrepresentation.
B: the developer, because the covenants in the new owner's deed to the developer have been breached.
C: the new owner, because the developer relied upon the abstract company, not the new owner, for information concerning title.
D: the new owner, because the new owner was without knowledge of any defects in the title to Newacre.

The explanation for the answer is:

B is the correct answer. The new owner made two guarantees to the developer when he conveyed Newacre: (1) a present title covenant against encumbrances warranting that there were no easements or other interests in third parties that would diminish the developer's ownership rights, and (2) a future title covenant of warranty which guaranteed that the new owner's title to Newacre was good, and that the new owner would assist in defending that title against claims by third parties. Consequently, C and D can be eliminated immediately; the new owner made the guarantees and will be held liable for his warranties, despite the fact that he hired the abstract company to research title and was not personally aware of the information regarding the power company's right of way. That leaves A and B. A is incorrect because this is not an issue of misrepresentation. The new owner did not make a false statement of material fact; he relied upon the same abstract information that the developer did in purchasing Newacre. B appropriately addresses the issue of the breach of covenants and is the best answer under the facts. A, C and D are incorrect.

Question 389 - Real Property - Ownership

The question was:

In 1995 a man executed his will which in pertinent part provided, "I hereby give, devise, and bequeath Greenvale to my surviving widow for life, remainder to such of my children as shall live to attain the age of 30, but if any child who dies under the age of 30 is survived by a child or children, such child or children shall take and receive the share which his, her, or their parent would have received had such parent lived to attain the age of 30."

At the date of writing of his will, the man was married and had two sons. The man's wife died in 2000, and the man remarried in 2002 and had a third child in 2004--a daughter. At his death in 2010, the man was survived by his second wife and three children.

In a jurisdiction which recognizes the common law Rule Against Perpetuities unmodified by statute, the result of the application of the rule is that the

A: remainder to the children and to the grandchildren is void because the man could have subsequently married a person who was unborn at the time the man executed his will.
B: remainder to the children is valid, but the substitutionary gift to the grandchildren is void because the man could have subsequently married a person who was unborn at the time the man executed his will.
C: gift in remainder to the sons or their children is valid, but the gift to the daughter or her children is void.
D: remainder to the children and the substitutionary gift to the grandchildren are valid.

The explanation for the answer is:

D is the correct answer. This is a tricky question. The issue of surviving 30 years would appear to trigger a rule against perpetuities (RAP) violation. However, in this case the children's remainder interests vest at their father's death because the class of children will be closed. Because each child can be used as a measuring life, every grandchild's interest will vest within a life in being plus twenty-one years. Therefore, both gifts are valid. C is incorrect because the daughter was a child of the man at the time the will went into effect. A and B are both incorrect because the interests are created at the man's death, not at the time the will was written and executed. Vested interests do not violate the RAP. The man's will merely states that the vested interest will only become possessory after his wife's death for those of his children who reached the age of 30. No requirement of survival is actually necessary for the gift to vest. Because the interests are vested, the man's substitutionary gift to any grandchildren of the deceased offspring under 30 will also be valid.

Question 397 - Real Property - Titles

The question was:

At a time when an owner held Lot 1 in the Fairoaks subdivision in fee simple, the owner's son executed a warranty deed that recited that the owner's son conveyed Lot 1, Fairoaks, to his girlfriend. The deed was promptly and duly recorded.

After the recording of the deed from the owner's son to his girlfriend, the owner conveyed Lot 1 to his son by a warranty deed that was promptly and duly recorded. Later, the owner's son conveyed the property to a buyer by warranty deed, and the deed was promptly and duly recorded. The buyer paid the fair market value of Lot 1 and had no knowledge of any claim of the girlfriend.

In an appropriate action, the buyer and the girlfriend contest title to Lot 1. In this action, judgment should be for

A: the girlfriend, because the girlfriend's deed is senior to the buyer's.
B: the buyer, because the buyer paid value without notice of the girlfriend's claim.
C: the girlfriend or the buyer, depending on whether a subsequent grantee is bound, at common law, by the doctrine of estoppel by deed.
D: the girlfriend or the buyer, depending on whether the girlfriend's deed is deemed recorded in the buyer's chain of title.

The explanation for the answer is:

D is correct. Because the facts do not provide the recording act in effect in this jurisdiction, students should first eliminate all the answer choices that would require them to know what type of act is in effect.

Answer A suggests that the girlfriend wins for being first in time - while this answer would be correct in a race act jurisdiction, the act was not provided, so answer A may be eliminated.

Answer B suggests that the buyer wins because he is a bona fide purchaser who paid value and had no notice of the girlfriend's claim - although this answer would be correct if the jurisdiction is governed by a notice act, the facts do not provide what act is in effect. Therefore, answer B may also be eliminated.

Answer C deals with the doctrine of estoppel by deed. That doctrine provides that where a party makes a conveyance of property that it does not own, but later obtains good title to the property, that party is estopped from claiming that its conveyance before obtaining title was not valid. If, however, the party subsequently makes a conveyance to a BFP (after acquiring the good title), the BFP will prevail over any conveyances that were made before good title was obtained. As such, answer C misstates the doctrine - a subsequent grantee *will* be bound by the doctrine, so answer C is incorrect.

Answer D suggests that it will only be possible to determine who wins by knowing whether the girlfriend's deed is deemed recorded in the buyer's chain of title. This is true regardless of the type of recording act governing the jurisdiction, so answer D is correct.

Question 414 - Real Property - Ownership

The question was:

A brother and sister, both of legal age, inherited Goodacre, their childhood home, from their father. They thereby became tenants in common.

Goodacre had never been used as anything except a residence. The brother had been residing on Goodacre with his father at the time his father died. The sister had been residing in a distant city. After their father's funeral, the brother continued to live on Goodacre, but the sister returned to her own residence.

There was no discussion between the brother and the sister concerning their common ownership, nor had there ever been any administration of their father's estate. The brother paid all taxes, insurance, and other carrying charges on Goodacre. He paid no rent or other compensation to his sister, nor did his sister request any such payment.

Thirty years later, a series of disputes arose between the brother and the sister for the first time concerning their respective rights to Goodacre. The jurisdiction where the land is located recognized the usual common-law types of cotenancies, and there is no applicable legislation on the subject.

If the brother claims the entire title to Goodacre in fee simple and brings an action against the sister to quiet title, and if the state where the land is located has an ordinary 20-year adverse possession statute, the decision should be for

A: the brother, because during the past 30 years the brother has exercised the type of occupancy ordinarily considered sufficient to satisfy the adverse possession requirements.
B: the brother, because the acts of the parties indicate the sister's intention to renounce her right to inheritance.
C: the sister, because there is no evidence that the brother has performed sufficient acts to constitute her ouster.
D: the sister, because one cotenant cannot acquire title by adverse possession against another.

The explanation for the answer is:

C is correct. This question highlights the need to carefully identify which facts relate to the principle of law being tested and which are superfluous. A cursory analysis of the question may lead some students to incorrectly choose answer A - the facts state that the brother has maintained possession for 30 years, and answer A suggests that the brother wins because he has acquired title by adverse possession. It is, however, *ownership*, not possession, that is relevant to answering the question presented. The brother and the sister's legal rights as tenants in common are unaffected by the degree to which they each physically possess the land. Although any one co-tenant has the right to possess the entire property, that possession in no way alters their ownership rights or those of the other co-tenants. Further, the brother has taken no action that could be characterized as adverse to his sister's possessory rights - he has made no attempt to prevent his sister's access to the land. Instead, the sister has simply chosen not to exercise her rights to physically possess the property yet. Since the brother has made no attempt to oust his sister from the land, her rights are unaffected by her physical absence, and answer C is correct.

Answer A is incorrect because the brother's possession was never adverse or hostile. Answer B is incorrect because any renunciation of rights by the sister would have to be made explicitly. Answer D is incorrect because a cotenant can obtain rights by adverse possession.

Question 417 - Real Property - Ownership

The question was:

A man and a woman owned Brownacre as joint tenants with the right of survivorship. The man executed a mortgage on Brownacre to a lender in order to secure a loan. Subsequently, but before the indebtedness was paid to the lender, the man died intestate with his son as his only heir at law. The jurisdiction in which Brownacre is located recognizes the title theory of mortgages.

In an appropriate action, the court should determine that title to Brownacre is vested

A: in the woman, with the entire interest subject to the mortgage.
B: in the woman, free and clear of the mortgage.
C: half in the woman, free of the mortgage, and half in the son subject to the mortgage.
D: half in the woman and half in the son, with both subject to the mortgage.

The explanation for the answer is:

C is correct. The man and the woman held the property in joint tenancy. A joint tenancy cannot be created without the "four unities" (time, title, possession and interest), and can be terminated in one of two ways: by partition or by severance. Where one joint tenant makes an *inter vivos* conveyance of their interest in the property, a severance occurs and the interest transferred is that of a tenant in common. Similarly, where one joint tenant executes a mortgage, a severance may also occur. Whether a mortgage causes a severance depends upon whether the jurisdiction is a title theory state (severance occurs) or a lien theory state (no severance occurs). Therefore, because the facts indicate that this is a title theory state, as soon as the man executed the mortgage to the lender, the joint tenancy was severed to the extent of the mortgage, and the property was held by the man and the woman as tenants in common, with the man's interest being subject to the mortgage (by executing a mortgage, the man still kept his title). When the man died, his interest in one-half of the property was bequeathed to his son, who takes it subject to the mortgage. As such, answer C is correct. Note that if the man had not executed the mortgage, his entire interest would have gone to the woman upon his death, and his son would have received nothing.

Answer A is incorrect because the joint tenancy was severed, and also because one joint tenant cannot obligate another joint tenant by unilaterally executing a mortgage. Answer B is incorrect because the woman only held a one-half interest after the severance. Answer D is incorrect because the son's execution of the mortgage had no effect on the woman's interest.

Question 423 - Real Property - Contract

The question was:

A seller and a buyer entered into a written contract for the sale and purchase of Wideacre. The contract provided that "[the seller] agrees to convey a good and marketable title to [the buyer] sixty days from the date of this contract." The purchase price was stated as $60,000.

At the time set for closing the seller tendered a deed in the form agreed to in the contract. The buyer's examination of the record prior to the date of closing had disclosed, however, that the owner of record was not the seller. Further investigation by the buyer revealed that, notwithstanding the state of the record, the seller had been in what the buyer conceded as adverse possession for fifteen years. The period of time to acquire title by adverse possession in the jurisdiction is ten years. The buyer refuses to pay the purchase price or to take possession "because of the inability of the seller to transfer a marketable title."

In an appropriate action by the seller against the buyer for specific performance, the seller will

A: prevail, because he has obtained a "good and marketable title" by adverse possession.
B: prevail, because the seller's action for specific performance is an action *in rem* even though the true owner is not a party.
C: not prevail, because the buyer cannot be required to buy a lawsuit even if the probability is great that the buyer would prevail against the owner of record.
D: not prevail, because the seller's failure to disclose his lack of record title constitutes fraud.

The explanation for the answer is:

C is correct. The warranty of marketable title is implied in all land sale contracts. This warranty requires the seller to provide marketable title to the buyer on (but not before) the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictions, covenants, easements or other limiting provisions that are not explicitly identified in the contract. A seller will not be expected to perform on the contract where doing so will require her to immediately enter a dispute over whether she holds good title. In this case, the facts indicate that the true owner is the record owner of Wideacre, and that the seller has apparently acquired title through adverse possession. The seller, however, had not obtained any judicial determination that he has acquired title to the land. The expense of filing or defending a suit to determine whether the buyer or the true owner holds good title will fall to the buyer, rather than the seller, if the purchase goes forward. Because the buyer will not be forced to "buy" this lawsuit along with the property, answer C is correct. Title need not be perfect, but it must be free of questions that present an unreasonable risk of litigation. Remember that on the MBE, title acquired by adverse possession is always unmarketable.

Answer A is incorrect because the seller's rights acquired through adverse possession have not been acknowledged through any sort of judicial determination, and title thereby remains unmarketable. Answer B is incorrect because the seller's action is simply a contract action between the seller and the buyer. Answer D is incorrect because fraud is irrelevant to marketability of the title.

Question 430 - Real Property - Ownership

The question was:

A widower owns in fee simple a ranch, Ranchacre. The widower has one child, a son, who is married. The widower has one grandchild, who is also married but has no children. In an effort to dispose of Ranchacre to his descendants and to honor a request by the grandchild that she be skipped in any disposition, the widower conveys Ranchacre to his son for life with the remainder to the grandchild's children in fee simple.

What interest, if any, is created in favor of the grandchild's unborn children at the time of the conveyance?

A: A contingent remainder
B: A vested remainder subject to divestment
C: A springing use
D: None

The explanation for the answer is:

A is correct. The widower's conveyance gave her son a life estate, nothing to the grandchild, and a contingent remainder to the grandchild's children. There are two broad categories of remainders - vested and contingent. A vested remainder is one that is guaranteed to become possessory. That is, there is no condition that must be met or future event that must happen before it becomes possessory. In contrast, a contingent remainder is dependent upon the happening of a later event or the satisfaction of some condition before it will become a possessory interest. In this case, the facts state that the grandchild does not have any children. As such, the grant to the grandchild's children is contingent upon those children being born.

A grantee must come into existence before it can hold a possessory right in land, so answer A is correct. Answer B is incorrect because a remainder cannot vest in a party that is not yet in existence. Answer C is incorrect because "springing" is a type of executory interest, not a remainder. Answer D is incorrect because there is an interest; it just has not vested yet.

Question 436 - Real Property - Contract

The question was:

A seller agreed to sell and a buyer agreed to buy a described lot on which a single-family residence had been built. Under the contract, the seller agreed to convey marketable title subject only to conditions, covenants, and restrictions of record and all applicable zoning laws and ordinances. The lot was subject to a 10-foot side line setback originally set forth in the developer's duly recorded subdivision plot. The applicable zoning ordinance zones that property for single-family units and requires an 8.5-foot side line setback.

Prior to closing, a survey of the property was made. It revealed that a portion of the seller's house was 8.4 feet from the side line.

The buyer refused to consummate the transaction on the ground that the seller's title is not marketable. In an appropriate action, the seller seeks specific performance. Who will prevail in such an action?

A: The seller, because any suit against the buyer concerning the setback would be frivolous.
B: The seller, because the setback violation falls within the doctrine *de minimis non curat lex*.
C: The buyer, because any variation, however small, amounts to a breach of contract.
D: The buyer, because the fact that the buyer may be exposed to litigation is sufficient to make the title unmarketable.

The explanation for the answer is:

D is correct. The warranty of marketable title is implied in all land sale contracts. This warranty requires the seller to provide a marketable title to the buyer on (but not before) the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictions, covenants, easements or other limiting provisions that are not explicitly identified in the contract. In establishing whether an encumbrance exists with regard to local codes and ordinances, it is important to distinguish between building codes and zoning laws. A property being in violation of the building code is not considered an encumbrance, and title to that building is marketable. In contrast, where a property is in violation of zoning laws, the violation is considered an encumbrance and the title is unmarketable. A buyer will not be expected to perform on the contract where doing so will require her to immediately enter a dispute over whether she holds good title. In this case, the facts indicate that the seller's house is not in compliance with the zoning regulations. As such, the title is not marketable because it may expose the buyer to litigation related to the violation. Therefore, answer D is correct.

Answer A is incorrect because the soundness of any litigation that may be brought is irrelevant to the marketability of the title. Answer B is incorrect because the degree of noncompliance with the zoning regulations is also irrelevant to marketability. Answer C is incorrect because the variation is a breach of the warranty of marketable title.

Question 440 - Real Property - Rights in Land

The question was:

The owner of Stoneacre entered into a written agreement with a miner. Under this written agreement, which was acknowledged and duly recorded, the miner, for a five-year-period, was given the privilege to enter on Stoneacre to remove sand, gravel, and stone in whatever quantities the miner desired. The miner was to make monthly payments to the owner on the basis of the amount of sand, gravel, and stone removed during the previous month. Under the terms of the agreement, the miner's privilege was exclusive against all others except the owner, who reserved the right to use Stoneacre for any purpose whatsoever including the removal of sand, gravel, and stone.

One year after the agreement was entered into, the state brought a condemnation action to take Stoneacre for a highway interchange. In the condemnation action, is the miner entitled to compensation?

A: Yes, because he has a license, which is a property right protected by the due process clause.
B: Yes, because he has a *profit a prendre*, which is a property right protected by the due process clause.
C: No, because he has a license, and licenses are not property rights protected by the due process clause.
D: No, because he has a *profit a prendre*, which is not a property right protected by the due process clause.

The explanation for the answer is:

B is correct. The agreement between the owner and miner created a *profit a prendre* for the miner. A profit gives the holder a right to enter onto another's land for the purpose of removing some sort of natural resource. Rather than a license, a profit is a property right, and is thereby afforded all the usual statutory and constitutional protections associated with such rights. Because the miner has a property right in Stoneacre, a governmental taking will entitle the miner to share in any condemnation award given to the owner. Therefore, answer B is correct.

Answers A and C are incorrect because the miner's profit is a right, not a license. Answer D is incorrect because the profit is afforded constitutional protection like any other property right.

Question 448 - Real Property - Ownership

The question was:

For valuable consideration, the owner of Riveracre signed and gave to the grantee a duly executed instrument that provided as follows: "The grantor may or may not sell Riveracre during her lifetime, but at her death, or if she earlier decides to sell, the property will be offered to [the grantee] at $500 per acre. [The grantee] shall exercise this right, if at all, within sixty days of receipt of said offer to sell." The grantee recorded the instrument. The instrument was not valid as a will.

Is the grantee's right under the instrument valid?

A: Yes, because the instrument is recorded.
B: Yes, because the grantee's right to purchase will vest or fail within the period prescribed by the Rule Against Perpetuities.
C: No, because the grantee's right to purchase is a restraint on the owner's power to make a testamentary disposition.
D: No, because the grantee's right to purchase is an unreasonable restraint on alienation.

The explanation for the answer is:

B is correct. The rule against perpetuities (RAP) applies to three types of interests: 1) vested remainders subject to open, 2) contingent remainders, and 3) executory interests. The rule against perpetuities dictates that where any of these interests would vest outside of a life-in-being plus 21 years, it is void. In this case, the owner is a life in being. The grantee's right of first refusal in relation to the property must be exercised within sixty days after the owner decides to sell, or within sixty days after her death, whichever comes first. Therefore, the longest amount of time that will pass before the grantee's right is extinguished is the owner's life plus sixty days. Because the owner's life plus sixty days is within the life-in-being plus 21 years requirement, the RAP is satisfied and the grantee's instrument is valid. Answer B is therefore correct. Answer A is incorrect because recording does not negate the requirement of compliance with the RAP. Answers C and D are incorrect because an owner is free to make such a contractual agreement.

Question 455 - Real Property - Ownership

The question was:

An owner conveyed a farm "to my neighbor, her heirs and assigns, so long as the premises are used for residential and farm purposes, then to my son and his heirs." The common law Rule Against Perpetuities, unmodified by statute, is part of the law of the jurisdiction in which the farm is located. As a consequence of the conveyance, the son's interest in the farm is

A: nothing.
B: a valid executory interest.
C: a possibility of reverter.
D: a right of entry for condition broken.

The explanation for the answer is:

A is correct. The rule against perpetuities (RAP) applies to three types of interests: 1) vested remainders subject to open, 2) contingent remainders, and 3) executory interests. The rule against perpetuities dictates that where any of these interests would vest outside of a life in being plus 21 years, it is void.

In this case, the owner is a life in being. Also, the facts indicate that the son's interest in the property would not become possessory until such time as the farm is no longer used "for residential and farm purposes." However, it could be decades (if ever) before the land is no longer used for those purposes; potentially decades after every life in being at the time of the conveyance has died. Because it may be later than a life in being plus 21 years before the son's right would vest, it is void as violative of the RAP, and answer A is correct. The son has an executory interest in this question, triggering the RAP, and rendering his interest in the farm invalid. Answers B, C and D are all incorrect because the conveyance violates the RAP.

Question 461 - Real Property - Contract

The question was:

A ten-lot subdivision was approved by the proper governmental authority. The authority's action was pursuant to a map filed by a developer, which included an undesignated parcel in addition to the ten numbered lots. The shape of the undesignated parcel is different and somewhat larger than any one of the numbered lots. Subdivision building restrictions were imposed on "all the lots shown on said map."

The developer contracts to sell the unnumbered lot, described by metes and bounds, to a buyer. Is title to the parcel marketable?

A: Yes, because the undesignated parcel is not a lot to which the subdivision building restrictions apply.
B: Yes, because the undesignated parcel is not part of the subdivision.
C: No, because the undesignated parcel has never been approved by the proper governmental authority.
D: No, because the map leaves it uncertain whether the unnumbered lot is subject to the building restrictions.

The explanation for the answer is:

D is correct. The warranty of marketable title is implied in all land sales contracts. This warranty requires the seller to provide a marketable title to the buyer on (but not before) the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictions, covenants, easements or other limiting provisions that are not explicitly identified in the contract. In this case, it is unclear whether or not the subdivision restrictions apply to the unnumbered parcel, but if they do apply, they constitute encumbrances on the title. Therefore, answer D is correct.

Answers A and B are incorrect because the facts do not indicate whether the parcel is part of the subdivision or not. Answer C is incorrect because the subdivision as a whole was approved; the issue is whether the parcel is part of that subdivision, not whether the parcel was approved.

Question 469 - Real Property - Rights in Land

The question was:

A realty company developed a residential development which included single-family dwellings, town houses, and high-rise apartments for a total of 25,000 dwelling units. Included in the deed to each unit was a covenant under which the grantee's "heirs and assigns" agreed to purchase electrical power only from a plant the realty company promised to build and maintain within the development. The realty company constructed the plant and necessary power lines. The plant did not supply power outside the development. An appropriate and fair formula was used to determine price.

After constructing and selling 12,500 of the units, the realty company sold its interest in the development to an investor company. The investor company operated the power plant and constructed and sold the remaining 12,500 units. Each conveyance from the investor company contained the same covenant relating to electrical power that the realty company had included in the 12,500 conveyances it had made.

A woman bought a dwelling unit from a man, who had purchased it from the realty company. Subsequently, the woman, whose lot was along the boundary of the development, ceased buying electrical power from the investor company and began purchasing power from General Power Company, which provided such service in the area surrounding the development. Both General Power and the investor company have governmental authorization to provide electrical services to the area. The investor company instituted an appropriate action against the woman to enjoin her from obtaining electrical power from General Power. If judgment is for the woman, it will most likely be because

A: the covenant does not touch and concern the land.
B: the mixture of types of residential units is viewed as preventing one common development scheme.
C: the covenant is a restraint on alienation.
D: there is no privity of estate between the woman and the investor company.

The explanation for the answer is:

Answer A is correct. The realty company has attempted to impose an equitable servitude on the residents of the subdivision. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantees had notice of the servitude, and 3) that the restriction touches and concerns the land. In this case, the facts clearly indicate that there was an intent for the restriction to be enforceable, and that the language of the deeds put subsequent grantees on notice. The restriction, however, does not touch and concern the land; it does not serve to make the land more useful or valuable in any way. Therefore, the restriction will not bind the woman, and answer A is correct.

Answer B is incorrect because mixing types of residential units does not negate the provisions of a common development scheme. Answer C is incorrect because the attempted restriction does not purport to limit an owner's alienation rights. Answer D is incorrect because privity is a requirement for covenants running with the land, not equitable servitudes.

Question 471 - Real Property - Ownership

The question was:

A man owned Blackacre in fee simple and by his will specifically devised Blackacre as follows: "To my daughter, her heirs and assigns, but if my daughter dies survived by a husband and a child or children, then to my daughter's husband during his lifetime with remainder to my daughter's children, their heirs and assigns. Specifically provided, however, that if my daughter dies survived by a husband and no child, Blackacre is specifically devised to my nephew, his heirs and assigns."

While the man's will was in probate, the nephew quitclaimed all interest in Blackacre to the daughter's husband. Three years later, the daughter died, survived by her husband but no children. The daughter left a will devising her interest in Blackacre to her husband. The only applicable statute provides that any interest in land is freely alienable.

The nephew instituted an appropriate action against the husband to establish title to Blackacre. Judgment should be for

A: the nephew, because his quitclaim deed did not transfer his after acquired title.
B: the nephew, because the husband took nothing under the man's will.
C: the husband, because the nephew had effectively conveyed his interest to the husband.
D: the husband, because the doctrine of after acquired title applies to a devise by will.

The explanation for the answer is:

C is correct. Based on the man's will, the following outcomes are possible after his death: 1) the daughter dies survived by a husband and children - husband will get a life estate, children get a vested remainder, 2) the daughter dies survived by husband and no children - the nephew gets the land in fee simple, 3) the daughter dies unmarried - land is devised according to the provisions of the daughter's estate. The facts indicate that the second possibility occurred - the daughter died survived by a husband but no children, so according to the man's will, the land goes to the nephew in fee simple. The nephew, however, has quitclaimed his interest in the land to the husband. Therefore, the nephew's quitclaimed interest to the land in fee simple went to the husband, and answer C is correct.

Answer A is incorrect because the nephew's quitclaim deed effectively transferred his interest. Answer B is incorrect because the husband takes as a result of the nephew's deed, not the man's will. Answer D is incorrect because the doctrine is irrelevant to the husband's acquisition of an interest.

Question 483 - Real Property - Titles

The question was:

A businessman had title to Brownacre in fee simple. Without the businessman's knowledge, a nearby farmer entered Brownacre in 1980 and constructed an earthen dam across a watercourse. The earthen dam trapped water that the farmer used to water a herd of cattle he owned. After twelve years of possession of Brownacre, the farmer gave possession of Brownacre to his oldest son. At the same time, the farmer also purported to transfer his cattle and all his interests in the dam and water to his son by a document that was sufficient as a bill of sale to transfer personal property but was insufficient as a deed to transfer real property.

One year later, the son entered into a lease with the businessman to lease Brownacre for a period of five years. After the end of the five-year term of the lease, the son remained on Brownacre for an additional three years and then left Brownacre. At that time the businessman conveyed Brownacre by a quitclaim deed to a friend. The period of time to acquire title by adverse possession in the jurisdiction is ten years.

After the businessman's conveyance to the friend, title to Brownacre was in

A: the farmer.
B: the businessman.
C: the son.
D: the businessman's friend.

The explanation for the answer is:

Choice A is correct. To obtain land through adverse possession, a party must for the length of the statutory period: 1) have actual physical possession or occupancy of the land, 2) maintain that possession continuously and without interruption, 3) exclude others from possession, 4) have "hostile" possession (be there without permission), and 5) maintain "open and notorious" possession. In this case, the farmer physically occupied the land for twelve years, did so without interruption, excluded others from possession, and did so without the businessman's permission. Furthermore, his construction of the dam clearly renders his use open and notorious. As such, the farmer has acquired title through adverse possession, and the conveyance by the businessman will have no effect. Answer A is therefore correct.

Answer B is incorrect because the businessman lost title through the farmer's adverse possession. Answer C is incorrect because the farmer's son was merely a lessee who never acquired an interest. Answer D is incorrect because the businessman had no title to convey to his friend.

Question 498 - Real Property - Rights in Land

The question was:

An owner conveyed Goldacre to "my son, his heirs and assigns, but if my son dies and is not survived by children by his present wife, then to my niece and his heirs and assigns." Shortly after taking possession, the son discovered rich metal deposits on the land, opened a mining operation, and removed and sold a considerable quantity of valuable ore without giving the niece any notice of his action. The son has no children. The son, his wife, and the niece are all still living. The niece brought an action in equity for an accounting of the value of the ore removed and for an injunction against further removal.

If the decision is for the son, it will be because

A: the niece has no interest in Goldacre.
B: the right to take minerals is an incident of a defeasible fee simple.
C: the right to take minerals is an incident of the right to possession.
D: there was no showing that the son acted in bad faith.

The explanation for the answer is:

B is the correct answer. The son has a present possessory interest in the land by virtue of his defeasible fee simple. One of the rights associated with a defeasible fee simple is the right to remove minerals and other resources from the land. That right is not subject to any requirement to provide notice to or obtain permission from any other parties who hold an interest in the land. Therefore, answer B is correct.

Answer A is incorrect because the niece holds a future interest in the property. Answer C is incorrect because the right to remove minerals is incident to the type of interest held, not possession. Answer D is incorrect because bad faith is irrelevant to determining the parties' rights with regard to these property interests.

Question 508 - Real Property - Ownership

The question was:

An unmarried couple purchased a condominium as tenants in common and lived in the condominium for three years. Subsequently, they made a verbal agreement that, on the death of either of them, the survivor would own the entire condominium, and, as a result, they decided they did not need wills.

Two years later, the couple was involved in the same automobile accident. The woman was killed immediately. The man died one week later. Both died intestate. The woman's sole heir is her brother. The man's sole heir is his mother. The brother claimed one-half of the condominium, and the mother claimed all of it. The jurisdiction has no applicable statute except for the Statute of Frauds; nor does it recognize common-law marriages.

In an appropriate action by the mother claiming the entire ownership of the condominium, the court will find that

A: The mother owns the entire interest because the couple did not make wills in reliance upon their oral agreement.
B: The mother owns the entire interest because she is entitled to reformation of the deed to reflect the verbal agreement.
C: The brother and the mother each own an undivided one-half interest because the couple each died as the result of the same accident.
D: The brother and the mother each own an undivided one-half interest because the Statute of Frauds applies.

The explanation for the answer is:

Choice D is correct. The Statute of Frauds mandates that any contract with regard to sale or conveyance of land must be in writing and signed by the party to be charged. In this case, the unmarried couple owned their condominium as tenants in common. Although they made a verbal agreement that if one member of the couple died the surviving member would acquire the decedent's interest in the condominium, that agreement is void as violative of the Statute of Frauds. Therefore, each member of the couple held a one-half interest in the property at the time of their death, and had only that interest to convey to their respective heirs. As such, the brother and the mother each inherited a one-half interest in the property, and answer D is correct.

Answer A is incorrect because it was failure to put the agreement in writing, not failure to make a will, that negated the oral agreement. Answer B is incorrect because the agreement violated the Statute of Frauds. Answer C is incorrect because uses incorrect reasoning. The timing of the couple's death would only be relevant if they were joint tenants with rights of survivorship. However, because of the Statute of Frauds, their verbal agreement regarding survivorship was not effective.

Question 511 - Real Property - Rights in Land

The question was:

In 1986, a cement company constructed a plant for manufacturing ready-mix concrete in Lakeville. At the time, the company was using bagged cement, which caused little or no dust. In 2000, the plaintiff bought a home approximately 1,800 feet from the cement plant.

One year ago, the cement company stopped using bagged cement and began to receive cement in bulk shipments. Since then, at least five truckloads of cement have passed the plaintiff's house daily. Cement blows off the trucks and into the the plaintiff's house. When the cement arrives at the cement plant, it is blown by forced air from the trucks into the storage bin. As a consequence cement dust fills the air surrounding the plant to a distance of 2,000 feet. The plaintiff's house is the only residence within 2,000 feet of the plant.

If the plaintiff asserts a claim against the cement company based on nuisance, will the plaintiff prevail?

A: Yes, because using bagged cement would substantially increase the cement company's costs.
B: Yes, because the cement dust interfered unreasonably with the use and enjoyment of the plaintiff's property.
C: No, because the cement company is not required to change its industrial methods to accommodate the needs of one individual.
D: No, because the cement company's methods are in conformity with those in general use in the industry.

The explanation for the answer is:

B is correct. A private nuisance is a substantial and unreasonable interference with another individual's use or enjoyment of their land. Here, the interference is substantial because it would be offensive and annoying to an average person. Therefore, if the interference is also unreasonable (in that the injury to the plaintiff outweighs the utility of the cement company's conduct), then the plaintiff will prevail. Thus, B is correct as it identifies the second element required for a successful private nuisance action.

Answer A is incorrect because the cement company may still have to alter its activities even if it proves costly to do so. The proper analysis is whether the injury to the plaintiff outweighs the utility of the defendant's conduct. Answer C is incorrect because a private nuisance action can be sustained by a single plaintiff. Answer D is incorrect because an industry-wide practice that constitutes a private nuisance is still actionable.

Question 530 - Real Property - Rights in Land

The question was:

The owner of Blackacre conveyed a right-of-way to a utility company "for the underground transportation of gas by pipeline, the location of right-of-way to be mutually agreed upon by [the owner] and [the utility company]." The utility company then installed a six-inch pipeline at a location selected by it and not objected to by the owner. Two years later, the utility company advised the owner of its intention to install an additional six-inch pipeline parallel to and three feet laterally from the original pipeline. In an appropriate action, the owner sought a declaration that the utility company has no right to install the second pipeline.

If the owner prevails, it will be because

A: any right implied to expand the original use of the right-of-way creates an interest that violates the Rule Against Perpetuities.
B: the original installation by the utility company defined the scope of the easement.
C: the owner did not expressly agree to the location of the right-of-way.
D: the assertion of the right to install an additional pipeline constitutes inverse condemnation.

The explanation for the answer is:

B is correct. The easement described in the facts is an express easement in gross. Unlike an easement appurtenant, which involves two plots of land, an easement in gross only involves one. The holder of an easement is entitled to reasonable use of that easement, in accordance with whatever scope of use the express grant defined. Where the easement holder makes use of an easement that is excessive and beyond its scope, the landowner may sue for an injunction preventing such use but is not entitled to terminate the original grant. In this case, the facts indicate that the owner created an express easement in gross, allowing the utility company to run a gas pipeline. The utility company's subsequent attempt to install another pipeline in a different location is beyond the scope of the easement that was granted. The owner has rightfully sued to prevent that excessive use, so answer B is correct.

Answer A is incorrect because the RAP is irrelevant to determining the scope of the easement. Answer C is incorrect because the easement holder has the right to select a reasonable location for its easement. Answer D is incorrect because the utility company is attempting to exceed the scope of its easement, not condemn a portion of the owner's land.

Question 614 - Real Property - Ownership

The question was:

A business woman was the owner in fee simple of adjoining lots known as Lot 1 and Lot 2. She built a house in which she took up residence on Lot 1. Thereafter, she built a house on Lot 2, which she sold, house and lot, to a buyer. Consistent with the contract of sale and purchase, the deed conveying Lot 2 from the business woman to the buyer contained the following clause: In the event the buyer, his heirs or assigns, decide to sell the property hereby conveyed and obtain a purchaser ready, willing, and able to purchase Lot 2 and the improvements thereon on terms and conditions acceptable to the buyer, said Lot 2 and improvements shall be offered to the business woman, her heirs or assigns, on the same terms and conditions. The business woman, her heirs or assigns, as the case may be, shall have ten days from said offer to accept said offer and thereby to exercise said option. Three years after delivery and recording of the deed and payment of the purchase price, the buyer became ill and moved to a climate more compatible with his health. The buyer's daughter orally offered to purchase the premises from the buyer at its then fair market value. The buyer declined his daughter's offer but instead deeded Lot 2 to his daughter as a gift.

Immediately thereafter, the buyer's daughter sold Lot 2 to a man at the then fair market value of Lot 2. The sale was completed by the delivery of deed and payment of the purchase price. At no time did the buyer or his daughter offer to sell Lot 2 to the business woman.

The business woman learned of the conveyance to the buyer's daughter and the sale by the daughter to the man one week after the conveyance of Lot 2 from the daughter to the man. The business woman promptly brought an appropriate action against the man to enforce rights created in him by the deed of the business woman to the buyer. The business woman tendered the amount paid by the man into the court for whatever disposition the court deemed proper. The common-law Rule Against Perpetuities is unmodified by statute.

Which of the following will determine whether the business woman will prevail?

I. The parol evidence rule.
II. The Statute of Frauds.
III. The type of recording statute of the jurisdiction in question.
IV. The Rule Against Perpetuities

A: The parol evidence rule.
B: The Rule Against Perpetuities.
C: The Statute of Frauds and the Rule Against Perpetuities.
D: The Statute of Frauds and the type of recording statute of the jurisdiction in question.

The explanation for the answer is:

B is the correct answer. The key to this question is identifying the appropriate disputed issue. The business woman placed a right of first refusal into the deed she sold to the buyer. There is no dispute regarding an agreement outside the writing, so the parol evidence rule will not apply. The buyer's oral discussion with his daughter regarding purchase of Lot 2 is irrelevant because he refused to sell and instead deeded the lot to her as a gift; there is no Statute of Frauds issue regarding the sale of land (thus triggering the right of first refusal) because no oral sales agreement was reached. Finally, the man does not have the protection of a bona fide purchaser because he had constructive notice of the deed's restrictions, which were properly recorded and cannot be circumvented through the alienation of land by gift; only a purchaser for value can provide the shelter of superior title. The jurisdiction's type of recording statute is thus irrelevant to the resolution of this dispute. The right of first refusal was clearly violated by the buyer and his daughter. The issue the business woman must overcome in order to prevail is a determination of whether the vague conditional wording of the right of first refusal violated the rule against perpetuities. While the RAP generally does not apply to interests retained by the grantor, it does apply to options and rights of first refusal if they are mere contract or covenant rights. Thus, B is the correct response. A, C, and D are incorrect.

Question 621 - Real Property - Rights in Land

The question was:

A father owned two adjoining parcels known as Lot 1 and Lot 2. Both parcels fronted on Main Street and abutted a public alley in the rear. Lot 1 was improved with a commercial building that covered all of the Main Street frontage of Lot 1; there was a large parking lot on the rear of Lot 1 with access from the alley only.

Fifteen years ago, the father leased Lot 1 to his son for 15 years. The son has continuously occupied Lot 1 since that time. Thirteen years ago, without his father's permission, the son began to use a driveway on Lot 2 as a better access between Main Street and the parking lot than the alley.

Eight years ago, the father conveyed Lot 2 to his daughter and, five years ago, the father conveyed Lot 1 to his son by a deed that recited "together with all the appurtenances."

Until last week, the son continuously used the driveway over Lot 2 to the son's parking lot in the rear of Lot 1.

Last week the daughter commenced construction of a building on Lot 2 and blocked the driveway used by the son. The son has commenced an action against the daughter to restrain her from blocking the driveway from Main Street to the parking lot at the rear of Lot 1.

The period of time to acquire rights by prescription in the jurisdiction is ten years.

If the son loses, it will be because

A: the father owned both Lot 1 and Lot 2 until eight years ago.
B: the son has access to the parking lot from the alley.
C: mere use of an easement is not adverse possession.
D: no easement was mentioned in the deed from the father to his daughter.

The explanation for the answer is:

The correct answer is A. This question requires you to understand not only *types* of easements, but also the ways to *create* an easement. The driveway between Lots 1 and 2 is an easement appurtenant - one that benefits a specific piece of land. But the creation of an easement appurtenant requires *two* pieces of property: a dominant estate and a servient one.

In this case, the facts state that the father owned all of Lots 1 and 2 until he sold Lot 2 to his daughter eight years ago. Therefore, there has only been an easement appurtenant in existence for eight years (because there was no dominant or servient estate prior to that time). Although the son will argue that an easement was created by prescription as a result of his adverse, continuous, visible and unpermitted use of the driveway, that use only involved *one* piece of property until eight years ago. Because the time period to acquire rights by prescription in this jurisdiction is ten years, the son's use would have to continue for two more years before it would create an easement appurtenant by prescription.

Answer B is incorrect because access only relates to easements by necessity. Although answer C is an accurate general legal statement, it does not explain why the son loses. Answer D is incorrect, because the easement appurtenant did not exist until *after* the daughter bought the land.

Question 628 - Real Property - Ownership

The question was:

Two friends, a man and a woman, owned a large tract of land, Blackacre, in fee simple as joint tenants with right of survivorship. While the woman was on an extended safari in Kenya, the man learned that there were very valuable coal deposits within Blackacre, but he made no attempt to inform the woman. Thereupon, the man conveyed his interest in Blackacre to his wife who immediately reconveyed that interest to the man. The common-law joint tenancy is unmodified by statute.

Shortly thereafter, the man was killed in an automobile accident. His will, which was duly probated, specifically devised his one-half interest in Blackacre to his wife.

The woman then returned from Kenya and learned what had happened. The woman brought an appropriate action against the wife, who claimed a one-half interest in Blackacre, seeking a declaratory judgment that she, the woman, was the sole owner of Blackacre.

In this action, who should prevail?

A: The wife, because the man and the woman were tenants in common at the time of the man's death.
B: The wife, because the man's will severed the joint tenancy.
C: The woman, because the joint tenancy was reestablished by the wife's reconveyance to the man.
D: The woman, because the man breached his fiduciary duty as her joint tenant.

The explanation for the answer is:

A is correct. The man and the woman held the property in joint tenancy. A joint tenancy cannot be created without the "four unities" (time, title, possession and interest), and can be terminated in one of two ways: by partition or by severance. Where one joint tenant makes an *inter vivos* conveyance of their interest in the property, a severance occurs and the interest transferred is that of a tenant in common. As soon as the man transferred his interest to his wife, the joint tenancy was severed and the property was held by his wife and the woman as tenants in common. When the wife immediately transferred her interest back to the man, the joint tenancy was *not* recreated because the four unities were no longer present. The man and the woman then held the property as tenants in common, so A is correct. B is incorrect because the man's *inter vivos* conveyance, not his will, severed the tenancy. D is incorrect because the man had no fiduciary duty to the woman.

Question 632 - Real Property - Ownership

The question was:

At the time of his death last week, the testator owned Blackacre, a small farm. By his duly probated will, drawn five years ago, the testator did the following:

(1) devised Blackacre "to [my nephew] for the life of [my brother], then to [my sister]";

(2) gave "all the rest, residue and remainder of my Estate, both real and personal, to [my friend]."

At his death, the testator was survived by his nephew, his sister, the testator's son and sole heir, and his friend. The testator's brother had died a week before the testator.

Title to Blackacre is now in

A: the nephew for for life, remainder to the sister.
B: the sister, in fee simple.
C: the son, in fee simple.
D: the friend, in fee simple.

The explanation for the answer is:

B is the correct answer. The following estates were created by the testator's will: the nephew held a life estate *per autre vie* (measured by the life of another) in Blackacre for as long as the brother lived; the brother held no estate whatsoever; The sister held a vested remainder in Blackacre during the brother's lifetime, and then when the brother died title went to the sister in fee simple. Neither the friend nor the son held any interest in Blackacre. Therefore, A, C, and D are incorrect.

Question 635 - Real Property - Titles

The question was:

A gentleman owned Greenacre in fee simple of record on January 10. On that day, a bank loaned the gentleman $50,000 and the gentleman mortgaged Greenacre to the bank as security for the loan. The mortgage was recorded on January 18.

The gentleman conveyed Greenacre to a buyer for a valuable consideration on January 11. The bank did not know of this, nor did the buyer know of the mortgage to the bank, until both discovered the facts on January 23, the day on which the buyer recorded the gentleman's deed.

The recording act of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record." There is no provision for a grace period, and there is no other relevant statutory provision.

The bank sued the buyer to establish that its mortgage was good against Greenacre.

The court should decide for

A: the buyer, because he paid valuable consideration without notice before the bank recorded its mortgage.
B: the buyer, because the bank's delay in recording means that it is estopped from asserting its priority in time.
C: the bank, because the buyer did not record his deed before the bank's mortgage was recorded.
D: the bank, because after the mortgage to the bank, the gentleman's deed to the buyer was necessarily subject to its mortgage.

The explanation for the answer is:

C is correct. The recording act quoted in this question is a race-notice act. To prevail under a race-notice act, a party must be a bona fide purchaser ("BFP") who: 1) was the first to record their deed (won the race) who also 2) acquired the land without notice of earlier purchasers. In this case, the first BFP to record its deed was the bank, and it did so without notice of the gentleman's conveyance to the buyer, so C is correct.

Answer A is incorrect because this is a race-notice jurisdiction, and the buyer lost the race to record. Answer B is incorrect because there is no time limit on the race - if you are the first to record then you win, regardless of how long it took you to do so. Answer D is not the best answer because the bank will prevail under the recording act even if the buyer's deed is not subject to the bank's mortgage.

Question 636 - Real Property - Rights in Land

The question was:

A businessman owned two adjacent parcels, Blackacre and Whiteacre. Blackacre fronts on a poor unpaved public road, while Whiteacre fronts on Route 20, a paved major highway. Fifteen years ago, the businessman conveyed to his son Blackacre "together with a right-of-way 25 feet wide over the east side of Whiteacre to Route 20." At that time, Blackacre was improved with a ten-unit motel.

Ten years ago, the businessman died. His will devised Whiteacre "to my son for life, remainder to my daughter." Five years ago, the son executed an instrument in the proper form of a deed, purporting to convey Blackacre and Whiteacre to a friend in fee simple. The friend then enlarged the motel to 12 units. Six months ago, the son died and the daughter took possession of Whiteacre. She brought an appropriate action to enjoin the friend from using the right-of-way.

In this action, who should prevail?

A: the daughter, because merger extinguished the easement.
B: the daughter, because the friend has overburdened the easement.
C: The friend, because he has an easement by necessity.
D: The friend, because he has the easement granted by the businessman to the son.

The explanation for the answer is:

D is the correct answer. Answer A is incorrect because no merger ever occurred; the son was the owner of Blackacre (as a result of the businessman's conveyance to him fifteen years ago), but he was only a life tenant in Whiteacre. If the businessman had conveyed ownership of Blackacre AND Whiteacre to the son, then the unity of ownership in the two parcels would have constituted a merger and terminated the easement, but that is not what happened here.

Answer B is incorrect because the mere addition of two units to the hotel does not constitute an excessive use or overburdening of the easement. Answer C is incorrect because there never was an easement by necessity; the facts state that Blackacre is accessible not only by way of the easement, but also by way of the public road. D is the correct answer because the easement granted by the previous owner of the two parcels ran with the land to the friend.

Question 647 - Real Property - Ownership

The question was:

A mother owned Blackacre, a two-family apartment house on a small city lot not suitable for partition-in-kind. Upon the mother's death, her will devised Blackacre to "my son and daughter."

A week ago, a creditor obtained a money judgment against the son, and properly filed the judgment in the county where Blackacre is located. A statute in the jurisdiction provides: any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.

The son needed cash, but the daughter did not wish to sell Blackacre. The son commenced a partition action against the daughter and the creditor.

Assume that the court properly ordered a partition by judicial sale.

After the sale, the creditor's judgment will be a lien on

A: all of Blackacre.
B: only a one-half interest in Blackacre.
C: all of the proceeds of a sale of Blackacre.
D: only the portion of the proceeds of sale due to the brother.

The explanation for the answer is:

D is correct. Unless the language of a conveyance indicates a clear intent to create a joint tenancy, the grantees will own the property as tenants in common. In this case, there is no language in the mother's conveyance indicating an intent to create a joint tenancy, so the sister and brother both hold an equal 50% interest in the property as tenants in common. The creditor's lien only entitles him to property owned by the brother, so answers A and C are incorrect. Answer B is incorrect because the creditor's lien was on the brother's interest in Blackacre, and that interest terminated when the property was sold.

Question 652 - Real Property - Contract

The question was:

A man entered into a valid written contract to sell Blackacre, a large tract of land, to a purchaser. At that time, Blackacre was owned by the man's father; the man had no title to Blackacre and was not the agent of the father.

After the contract was executed and before the scheduled closing date, the father died intestate, leaving the man as his sole heir. Shortly thereafter, the man received an offer for Blackacre that was substantially higher than the purchase price in the contract with the purchaser. The man refused to close with the purchaser even though she was ready, willing, and able to close pursuant to the contract.

The purchaser brought an appropriate action for specific performance against the man.

In that action, the purchaser should be awarded

A: nothing, because the man had no authority to enter into the contract with the purchaser.
B: nothing, because the doctrine of after-acquired title does not apply to executory contracts.
C: judgment for specific performance, because the man acquired title prior to the scheduled closing.
D: judgment for specific performance, to prevent unjust enrichment of the man.

The explanation for the answer is:

C is the correct answer. Although the man had no authority to enter the contract at the time it was executed, he acquired good title to the property before the closing date, so answer A is incorrect. The remedies available to the purchaser upon the man's breach of the sale contract include damages and specific performance. Answer C is a better choice than answer D because it is the man's acquisition of good title before the closing that provides a basis for the purchaser's claim against him for breach of contract, not the mere fact that he may be unjustly enriched.

Question 671 - Real Property - Ownership

The question was:

A brother and sister owned Blackacre as joint tenants, upon which was situated a two-family house. The brother lived in one of the two apartments and rented the other apartment to a tenant. The brother got in a fight with the tenant and injured him. The tenant obtained and properly filed a judgment for $10,000 against the brother.

The statute in the jurisdiction reads: Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.

The sister, who lived in a distant city, knew nothing of the tenant's judgment. Before the tenant took any further action, the brother died. The common-law joint tenancy is unmodified by statute.

The sister then learned the facts and brought an appropriate action against the tenant to quiet title to Blackacre.

The court should hold that the tenant has

A: a lien against the whole of Blackacre, because he was a tenant of both the brother and the sister at the time of the judgment.
B: a lien against the brother's undivided one-half interest in Blackacre, because his judgment was filed prior to the brother's death.
C: no lien, because the sister had no actual notice of the tenant's judgment until after the brother's death.
D: no lien, because the brother's death terminated the interest to which the tenant's lien attached.

The explanation for the answer is:

D is correct. One of the rights associated with a joint tenancy is the right of survivorship. Where two parties hold a property in joint tenancy and one dies, the decedent's interest in the property terminates and the survivor's interest is increased to 100%. Because the brother's interest in Blackacre terminated upon his death, thereby making the sister the sole owner, the interest to which tenant's lien attached no longer existed. Therefore, answer D is correct and A, B, and C are incorrect.

Question 688 - Real Property - Ownership

The question was:

A decedent owned in fee simple Blueacre, a farm of 300 acres. He died and by will, duly admitted to probate, devised Blueacre to his surviving widow for life with remainder in fee simple to three individuals: his niece, his daughter, and his son. All three individuals survived the decedent.

At the time of the decedent's death, there existed a mortgage on Blueacre that the decedent had given ten years earlier to secure a loan for the purchase of the farm. At his death, there remained $40,000 in unpaid principal, payable in installments of $4,000 per year for the next ten years. In addition, there was interest due at the rate of 10% per annum, payable annually with the principal installment. The widow took possession and, out of a gross income of $50,000 per year, realized $25,000 net income after paying all expenses and charges except the principal installment and interest due on the mortgage.

The son and the niece wanted all three parties, including the daughter, to each contribute one-third of the amount needed to pay the mortgage installments. The daughter objected, contending that the widow should pay all of these amounts out of the profits she had made in operation of the farm. When foreclosure of the mortgage seemed imminent, the daughter sought legal advice.

If the daughter obtained sound advice relating to her rights, she was told that

A: her only protection would lie in instituting an action for partition to compel the sale of the life estate of the widow and to obtain the value of the daughter's one-third interest in remainder.
B: she could obtain appropriate relief to compel the widow personally to pay the sums due because the income is more than adequate to cover these amounts.
C: she could be compelled personally to pay her share of the amounts due because discharge of the mortgage enhances the principal.
D: she could not be held personally liable for any amount, but her share in remainder could be lost if the mortgage installments were not paid.

The explanation for the answer is:

Answer D is correct. Life tenants have a duty not to commit voluntary or permissive waste with regard to the property during their life tenancy. A failure to keep the property in repair, pay taxes on the property, or pay interest on any mortgage on the property all constitute permissive waste. The facts indicate that the widow has a life estate, and that the three children all hold a remainder in fee simple. Although the widow's duty not to commit permissive waste requires her to pay interest on the mortgage, she has no obligation to pay the principal. The daughter cannot be held liable for the widow's failure to pay the interest, or for the failure of the holders of the future interest to make the principal payments. The daughter does, however, risk losing her share of the remainder in Blueacre if the holder of the mortgage forecloses on the property. Therefore answer D is correct, and answers A, B, and C are incorrect.

Question 692 - Real Property - Titles

The question was:

The owner of Blackacre had promised his best friend that, if at any time the owner decided to sell his summer cottage property known as Blackacre, he would give his best friend the opportunity to purchase Blackacre.

At a time when the best friend was serving overseas with the United States Navy, the owner decided to sell Blackacre and spoke to his best friend's mother. Before the best friend sailed, he had arranged for his mother to become a joint owner of his various bank accounts so that she would be able to pay his bills when he was gone. When she heard from the owner, the best friend's mother took the necessary funds from the best friend's account and paid the owner $20,000, the fair market value of Blackacre. The owner executed and delivered to the best friend's mother a deed in the proper form purporting to convey Blackacre to the best friend. The mother promptly and properly recorded the deed.

Shortly thereafter, the mother learned that the best friend (her son) had been killed in an accident at sea one week before the delivery of the deed. The best friend's will, which has now been duly probated, leaves his entire estate to First Church. His mother is the sole heir-at-law of the best friend.

There is no statute dealing with conveyances to dead persons.

Title to Blackacre is now in

A: First Church.
B: the best friend's mother.
C: the owner free and clear.
D: the owner, subject to a lien to secure $20,000 to the best friend's estate.

The explanation for the answer is:

The correct answer is D. A deed to a dead person does not convey good title and is, therefore, void. In this case, the facts tell us that the best friend died a week before delivery of the deed, thus the transaction was incomplete while he was alive. The fact that the owner and the best friend's mother were unaware of the best friend's death is irrelevant.

A is incorrect because no title passed to the best friend and therefore could not have passed on to the beneficiaries of his estate. B is incorrect because even if title had passed to the best friend, his mother would not have inherited the estate. C is incorrect because the transaction was void and therefore, the consideration paid must be returned.

Question 704 - Real Property - Mortgages

The question was:

A man executed and delivered a promissory note and a mortgage securing the note to a mortgage company, which was named as payee in the note and as mortgagee in the mortgage. The note included a statement that the indebtedness evidenced by the note was "subject to the terms of a contract between the maker and the payee of the note executed on the same day" and that the note was "secured by a mortgage of even date." The mortgage was promptly and properly recorded. Subsequently, the mortgage company sold the man's note and mortgage to a bank and delivered to the bank a written assignment of the man's note and mortgage. The assignment was promptly and properly recorded. The mortgage company retained possession of both the note and the mortgage in order to act as collecting agent. Later, being short of funds, the mortgage company sold the note and mortgage to a woman at a substantial discount. The mortgage company executed a written assignment of the note and mortgage to the woman and delivered to her the note, the mortgage, and the assignment. The woman paid value for the assignment without actual knowledge of the prior assignment to the bank and promptly and properly recorded her assignment. The principal of the note was not then due, and there had been no default in payment of either interest or principal.

If the issue of ownership of the man's note and mortgage is subsequently raised in an appropriate action by the bank to foreclose, the court should hold that

A: The woman owns both the note and the mortgage.
B: The bank owns both the note and the mortgage.
C: The woman owns the note, and the bank owns the mortgage.
D: The bank owns the note, and the woman owns the mortgage.

The explanation for the answer is:

Answer B is correct. The mortgage company sold the man's note and mortgage to the bank, delivered to the bank a written assignment of the same, and the bank promptly and properly recorded that assignment. When the woman purchased that same note and mortgage from the mortgage company at a later date, the bank had already recorded its interest in both. The bank's prompt and proper recording of the assignment secured its ownership of that assignment, and put the woman on notice that it had already been sold, so answer B is correct, and A, C, and D are incorrect.

Question 713 - Real Property - Titles

The question was:

A landowner owned Blueacre, a valuable tract of land located in York County. The owner executed a document in the form of a warranty deed of Blueacre, which was regular in all respects except that the only language designating the grantees in each of the granting and *habendum* clauses was: "The leaders of all the Protestant Churches in York County." The instrument was acknowledged as required by statute and promptly and properly recorded. The owner told his lawyer, but no one else, that he had made the conveyance as he did because he abhorred sectarianism in the Protestant movement and because he thought that the leaders would devote the asset to lessening sectarianism.

The owner died suddenly and unexpectedly a week later, leaving a will that bequeathed and devised his entire estate to a friend. After probate of the will became final and the administration on the owner's estate was closed, the friend instituted an appropriate action to quiet title to Blueacre and properly served as defendant each Protestant church situated in the county.

The only evidence introduced consisted of the chain of title under which the owner held, the probated will, the recorded deed, the fact that no person knew about the deed except the owner and his lawyer, and the conversation the owner had with his lawyer described above.

In such action, judgment should be for

A: the friend, because there is inadequate identification of the grantees in the deed.
B: the friend, because the state of the evidence would not support a finding of delivery of the deed.
C: the defendants, because a deed is *prima facie* valid until rebutted.
D: the defendants, because recording established *prima facie* delivery until rebutted.

The explanation for the answer is:

Answer A is correct. A deed must unambiguously identify the land and the parties to transfer title. A grant to "the leaders of all the Protestant Churches in York County" is simply too broad and vague to adequately identify the intended grantees. Therefore, the deed will not transfer title, and the friend will take Blueacre under the will. Answer B is incorrect because delivery is presumed if the deed is recorded. Answer C is incorrect because a deed will only be considered valid if it complies with the requisite formalities. D is incorrect because although delivery does establish a presumption of delivery, the deed is still invalid because it failed to unambiguously identify the grantees.

Question 723 - Real Property - Titles

The question was:

Blackacre was a tract of 100 acres retained by the owner after he had developed the adjoining 400 acres as a residential subdivision. The owner had effectively imposed restrictive covenants on each lot in the 400 acres. A buyer offered the owner a good price for a five-acre tract located in a corner of Blackacre far away from the existing 400-acre residential subdivision. The owner conveyed the five-acre tract to the buyer and imposed the same restrictive covenants on the five-acre tract as he had imposed on the lots in the adjoining 400 acres. The owner further covenanted that when he sold the remaining 95 acres of Blackacre he would impose the same restrictive covenants in the deed or deeds for the 95 acres. The owner's conveyance to the buyer was promptly and properly recorded.

However, shortly thereafter, the owner conveyed the remaining 95 acres to a businessman for $100,000 by a deed that made no mention of any restrictive covenants in the buyer's deed. The businessman now proposes to build an industrial park which would violate such restrictive covenants if they are applicable.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

In an appropriate action by the buyer to enforce the restrictive covenants against the businessman's 95-acre tract, if the businessman wins it will be because

A: the deed imposing the restrictions was not in the chain of title for the 95 acres when the businessman bought them.
B: the disparity in acreage means that the covenant can only be personal to the owner.
C: negative reciprocal covenants are not generally recognized.
D: a covenant to impose restrictions is an illegal restraint on alienation.

The explanation for the answer is:

Choice A is correct. The recording act quoted in the facts of this question is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded the deed without notice of earlier purchasers. When the businessman purchased the 95 acre portion of Blackacre, a title search on those 95 acres would not have revealed any deeds including a residential subdivision restriction. While the owner may have promised the buyer he would include such restrictions in the deeds for subsequent sales of Blackacre, he did not do so. Because the businessman purchased Blackacre without notice of any restrictive covenants affecting that land, no such covenants can be enforced against him, so answer A is correct. Answers B, C, and D are all incorrect statements of law.

Question 732 - Real Property - Ownership

The question was:

The owner of Greenacre owned the land in fee simple. By warranty deed he conveyed Greenacre to a friend for life, "and from and after the death of my friend to my uncle, his heirs and assigns."

Subsequently the uncle died, devising all of his estate to a hospital. The uncle was survived by his daughter, his sole heir-at-law.

Shortly thereafter the friend died, survived by the owner, the hospital, and the daughter.

Title to Greenacre now is in

A: the owner, because the contingent remainder never vested, and the owner's reversion was entitled to possession immediately upon the friend's death.
B: the hospital, because the vested remainder in the uncle was transmitted by his will.
C: The daughter, because she is the uncle's heir.
D: either the owner or the daughter, depending upon whether the destructibility of contingent remainders is recognized in the applicable jurisdiction.

The explanation for the answer is:

Always determine what interests each party holds before attempting to answer a question of this type. The facts indicate that the friend has a life estate, the uncle has a vested remainder, and his heirs and assigns have a vested remainder subject to open. The owner retained no interest in the property. As such, answers A and D are incorrect, because no one held a contingent remainder.

Answer C is factually correct in stating that the daughter is the uncle's heir, but the uncle devised his interest in Greenacre to the hospital, so there is no interest left for his daughter to inherit. Therefore, answer B is correct.

Question 737 - Real Property - Rights in Land

The question was:

A plaintiff and a defendant own adjoining lots in the central portion of a city. Each of their lots had an office building. The defendant decided to raze the existing building on her lot and erect a building of greater height. The defendant had received all governmental approvals required to pursue her project.

There is no applicable statute or ordinance (other than those dealing with various approvals for zoning, building, etc.).

After the defendant had torn down the existing building, she proceeded to excavate deeper. The defendant used shoring that met all local, state, and federal safety regulations, and the shoring was placed in accordance with those standards.

The plaintiff notified the defendant that cracks were developing in the building situated on the plaintiff's lot. The defendant took the view that any subsidence suffered by the plaintiff was due to the weight of the plaintiff's building, and correctly asserted that none would have occurred had the plaintiff's soil been in its natural state. The defendant continued to excavate.

The building on the plaintiff's lot did suffer extensive damage, requiring the expenditure of $750,000 to remedy the defects.

Which of the following is the best comment concerning the plaintiff's action to recover damages from the defendant?

A: The defendant is liable, because she removed necessary support for the plaintiff's lot.
B: The defendant cannot be held liable simply upon proof that support was removed, but may be held liable if negligence is proved.
C: Once land is improved with a building, the owner cannot invoke the common-law right of lateral support.
D: The defendant's only obligation was to satisfy all local, state, and federal safety regulations.

The explanation for the answer is:

B is the correct response. A landowner has the right to lateral support of his land, i.e., to have his land supported in its natural state by adjoining land. When the land is improved by buildings, and excavation on adjacent land causes damage, the excavating landowner will be strictly liable for the damages to the building only if it is shown that the land would have collapsed in its natural state. However, even if the land would not have collapsed in its natural state, the adjacent landowner will be liable for damage to the building if the excavation was done negligently. Therefore, in this case the success of the plaintiff's claim will depend on his ability to prove negligence by the defendant during the excavation.

Answer A is incorrect because it has not been established whether the damage would have occurred if the land had been in its natural state. Answer C is incorrect because a landowner does not lose the right to lateral support by improving his land. Answer D is incorrect because the defendant must provide sufficient lateral support to avoid collapse of the land in its natural state, regardless of any applicable regulations. Also, compliance with safety regulations will not preclude the plaintiff's claim if the defendant is found to have acted negligently during the excavation.

Question 738 - Real Property - Rights in Land

The question was:

A plaintiff and a defendant own adjoining lots in the central portion of a city. Each of their lots had an office building. The defendant decided to raze the existing building on her lot and erect a building of greater height. The defendant had received all governmental approvals required to pursue her project.

There is no applicable statute or ordinance (other than those dealing with various approvals for zoning, building, etc.).

Assume that no problems with subsidence or other misadventures occurred during construction of the defendant's new building. However, when it was completed, the plaintiff discovered that the shadow created by the new higher building placed her building in such deep shade that the ability to lease space was diminished, and the rent she could charge and the occupancy rate were substantially lower. Assume that these facts are proved in an appropriate action the plaintiff instituted against the defendant for all and any relief available.

Which of the following is the most appropriate comment concerning this lawsuit?

A: The plaintiff is entitled to a mandatory injunction requiring the defendant to restore conditions to those existing with the prior building insofar as the shadow is concerned.
B: The court should award permanent damages, in lieu of an injunction, equal to the present value of all rents lost and loss on rents for the reasonable life of the building.
C: The court should award damages for losses suffered to the date of trial and leave open recovery of future damages.
D: Judgment should be for the defendant, because the plaintiff has no cause of action.

The explanation for the answer is:

D is correct. While landowners possesses a number of rights with regard to their property, as well as the areas above and below it, there are no rights to sunlight, fresh air, or view. As such, the plaintiff has no legal basis for a cause of action against the defendant, so answer D is correct and answers A, B, and C are incorrect.

Question 746 - Real Property - Rights in Land

The question was:

A businessman who owned Blackacre and Whiteacre, two adjoining parcels, conveyed Whiteacre to a gas company owner and covenanted in the deed to the gas company owner that when he, the businessman, sold Blackacre he would impose restrictive covenants to prohibit uses that would compete with the filling station that the gas company owner intended to construct and operate on Whiteacre. The deed was not recorded.

The gas company owner constructed and operated a filling station on Whiteacre and then conveyed Whiteacre to his nephew, who continued the filling station use. The deed did not refer to the restrictive covenant and was promptly and properly recorded.

The businessman then conveyed Blackacre to a man, who knew about the businessman's covenant prohibiting the filling station use but nonetheless completed the transaction when he noted that no such covenant was contained in the businessman's deed to him. The man began to construct a filling station on Blackacre.

The nephew brought an appropriate action to enjoin the man from using Blackacre for filling station purposes.

If the nephew prevails, it will be because

A: The man had actual knowledge of the covenant to impose restrictions.
B: The man is bound by the covenant because of the doctrine of negative reciprocal covenants.
C: business-related restrictive covenants are favored in the law.
D: The man has constructive notice of the possibility of the covenant resulting from circumstances.

The explanation for the answer is:

Choice A is correct. This question deals with an equitable servitude. There are three elements that must be met for an equitable servitude to run with the land, including: 1) intent for it to run with the land, 2) actual, inquiry or record notice and 3) the covenant "touches and concerns" the land. Importantly, a covenant not to compete is considered a covenant that "touches and concerns" the land. Because the facts indicate that the man had notice of the covenant to impose restrictions, the covenant will run with the land, and answer A is correct. Additionally, keep in mind the difference between an equitable servitude and a real covenant. If money damages are sought, you should consider it a possible real covenant. If an injunction is sought, consider whether you are dealing with an equitable servitude. Answers B, C and D are all inaccurate statements of law.

Question 754 - Real Property - Ownership

The question was:

A farmer owned Greenacre in fee simple. The small house on Greenacre was occupied, with the farmer's oral permission, rent-free, by the farmer's son, and the college classmate of the farmer's son. The farmer's son was then 21 years old.

The farmer, by properly executed instrument, conveyed Greenacre to "my beloved son, his heirs and assigns, upon the condition precedent that he earn a college degree by the time he reaches the age of 30. If, for any reason, he does not meet this condition, then Greenacre shall become the sole property of my beloved daughter, her heirs and assigns." At the time of conveyance, the farmer's son and the college classmate attended a college located several blocks from Greenacre. Neither had earned a college degree.

One week after the delivery of the deed to the farmer's son, the farmer's son recorded the deed and immediately told the college classmate that he was going to begin charging the college classmate rent since "I am now your landlord." There is no applicable statute.

The farmer's son and the college classmate did not reach an agreement, and the farmer's son served the appropriate notice to terminate whatever tenancy the college classmate had. The farmer's son then sought, in an appropriate action, to oust the college classmate.

Who should prevail?

A: The farmer's son, because the conveyance created a fee simple subject to divestment in the farmer's son.
B: The farmer's son, because the farmer's conveyance terminated the college classmate's tenancy.
C: The college classmate, because the farmer's permission to occupy preceded the farmer's conveyance to the farmer's son.
D: The college classmate, because the college classmate is a tenant of the farmer, not of the farmer's son.

The explanation for the answer is:

D is correct. In this case, the farmer's son's interest in Greenacre is a future interest, contingent upon his earning a college degree by the time he reaches age 30. As such, the present interest in Greenacre is still held by the farmer, who is the college classmate's landlord. Although the farmer's son will become sole owner of the property if he succeeds in earning his degree before age 30, he has yet to meet that contingency. Therefore, the college classmate is still a tenant of the farmer, and answer D is correct.

Answer A is incorrect because it misstates the farmer's son's interest. Answer B is incorrect because the conveyance is a contingency and thus, has no effect on the college classmate's tenancy until the farmer's son earns his college degree. Answer C is incorrect because it is the fact that the farmer holds a present interest, not the timing of his permission to live on Greenacre that is determinative.

Question 770 - Real Property - Contract

The question was:

A landowner owned and occupied Blackacre, which was a tract of land improved with a one-family house. His friend orally offered him $50,000 for Blackacre, the fair market value, and he accepted. Because they were friends, they saw no need for attorneys or written contracts and shook hands on the deal. The friend paid the landowner $5,000 down in cash and agreed to pay the balance of $45,000 at an agreed closing time and place.

Before the closing, the friend inherited another home and asked the landowner to return his $5,000. The landowner refused, and, at the time set for the closing, the landowner tendered a good deed to the friend and declared his intention to vacate Blackacre the next day. The landowner demanded that the friend complete the purchase. The friend refused. The fair market value of Blackacre has remained $50,000.

In an appropriate action brought by the landowner against the friend for specific performance, if the landowner loses, the most likely reason will be that

A: the agreement was oral.
B: keeping the $5,000 is the landowner's exclusive remedy.
C: The friend had a valid reason for not closing.
D: The landowner remained in possession on the day set for the closing.

The explanation for the answer is:

A is correct. The Statute of Frauds mandates that any contract for the sale of land *must* be in writing and signed by the party to be charged. In this case, the friend's reasons for refusing to close and the landowner's justifications for mandating performance are irrelevant because the sale contract was never memorialized in a writing. A land sale contract may never be oral, so answer A is correct, and B, C, and D are incorrect.

Question 781 - Real Property - Ownership

The question was:

Twenty years ago, a testator who owned Blackacre, a one-acre tract of land, duly delivered a deed of Blackacre "to the school district so long as it is used for school purposes." The deed was promptly and properly recorded. Five years ago, the testator died leaving his son as his only heir but, by his duly probated will, he left "all my Estate to my friend Fanny."

Last month, the school district closed its school on Blackacre and for valid consideration duly executed and delivered a quitclaim deed of Blackacre to a developer, who planned to use the land for commercial development. The developer has now brought an appropriate action to quiet title against the testator's son, Fanny, and the school district.

The only applicable statute is a provision in the jurisdiction's probate code which provides that any property interest which is descendible is devisable.

In such action, the court should find that title is now in

A: The developer.
B: The son.
C: Fanny.
D: The school district.

The explanation for the answer is:

C is correct. In this case, the school district's interest was a fee simple determinable (meaning it could be terminated), and the testator's interest was a possibility of reverter. According to the facts, the only event that could terminate the school district's interest would be to cease using the land for "school purposes." When that event occurred, the school's interest terminated and the land reverted back to the testator. The testator, however, had died by the time his interest reverted, so that interest went to Fanny in accordance with the dictates of the testator's duly probated will. Note that if the testator had not bequeathed his estate to Fanny, then the interest would have reverted to the testator's son as the testator's only heir, and answer B would have been correct. Therefore, C is correct, and A, B, and D are incorrect.

Question 782 - Real Property - Ownership

The question was:

By warranty deed, a woman conveyed Blackacre to her friend and her neighbor "as joint tenants with right of survivorship." The friend and neighbor are not related. The friend conveyed all her interest to her boyfriend by warranty deed and subsequently died intestate. Thereafter, the neighbor conveyed to his girlfriend by warranty deed.

There is no applicable statute, and the jurisdiction recognizes the common-law joint tenancy.

Title to Blackacre is in

A: The girlfriend.
B: The woman.
C: The girlfriend and the boyfriend.
D: The girlfriend and the heirs of the friend.

The explanation for the answer is:

C is correct. The facts state that the property was held by the friend and neighbor in joint tenancy. Where one joint tenant makes an *inter vivos* conveyance of their interest in a property, a severance of the joint tenancy occurs and the interest transferred is that of a tenant in common. As soon as the friend made an *inter vivos* conveyance to her boyfriend, the joint tenancy was severed, and he and the neighbor became tenants in common. As such, the neighbor's conveyance to his girlfriend was likewise a transfer of an interest as a tenant in common. Therefore, the girlfriend and boyfriend hold title as tenants in common, and answer C is correct, and A, B, and D are incorrect.

Question 802 - Real Property - Rights in Land

The question was:

Blackacre is a large tract of land owned by a religious group. On Blackacre, the religious group erected a large residential building where its members reside. Blackacre is surrounded by rural residential properties and its only access to a public way is afforded by an easement over a strip of land 30 feet wide. The easement was granted to the religious group by deed from a businesswoman, the owner of one of the adjacent residential properties. The religious group built a driveway on the strip, and the easement was used for 20 years without incident or objection.

Last year, as permitted by the applicable zoning ordinance, the religious group constructed a 200-bed nursing home and a parking lot on Blackacre, using all of Blackacre that was available for such development. The nursing home was very successful, and on Sundays visitors to the nursing home overflowed the parking facilities on Blackacre and parked all along the driveway from early in the morning through the evening hours. After two Sundays of the resulting congestion and inconvenience, the businesswoman erected a barrier across the driveway on Sundays preventing any use of the driveway by anyone seeking access to Blackacre. The religious group objected.

The businesswoman brought an appropriate action to terminate the easement.

The most likely result in this action is that the court will hold for

A: The businesswoman, because the religious group excessively expanded the use of the dominant tenement.
B: The businesswoman, because the parking on the driveway exceeded the scope of the easement.
C: The religious group, because expanded use of the easement does not terminate the easement.
D: The religious group, because the businesswoman's use of self-help denies her the right to equitable relief.

The explanation for the answer is:

C is correct. Unless the terms of an easement state otherwise, it is assumed that the easement is permanent and that it will be used for the reasonable development of the dominant estate. In this case, the religious group is a religious organization with a large number of members living on Blackacre. Although the nursing home has increased use of the easement on one day of the week, such use (increased traffic to a religious group's facility on a Sunday) is the type that would have been reasonably contemplated by the parties at the time the easement was granted, so answer C is correct. Answers A and B are incorrect for that same reason. Answer D is incorrect because it is legally inaccurate - the use of self-help by a party (where it is legally entitled to do so) will not negate its right to equitable relief.

Question 804 - Real Property - Contract

The question was:

Three months ago, a buyer agreed in writing to buy a property owner's single-family residence, Liveacre, for $110,000. The buyer paid the owner a $5,000 deposit to be applied to the purchase price. The contract stated that the owner had the right at his option to retain the deposit as liquidated damages in the event of the buyer's default. The closing was to have taken place last week. Six weeks ago, the buyer was notified by his employer that he was to be transferred to another job 1,000 miles away. The buyer immediately notified the owner that he could not close, and therefore he demanded the return of his $5,000. The owner refused, waited until after the contract closing date, listed with a broker, and then conveyed Liveacre for $108,000 to a subsequent purchaser found by the real estate broker. The subsequent purchaser paid the full purchase price and immediately recorded his deed. The subsequent purchaser knew of the prior contract with the original buyer. In an appropriate action, the original buyer seeks to recover the $5,000 deposit from the owner.

The most probable result will be that the owner

A: must return the $5,000 to the original buyer, because the owner can no longer carry out his contract with the original buyer.
B: must return the $5,000 to the original buyer, because he was legally justified in not completing the contract.
C: must return $3,000 to the original buyer, because the owner's damages were only $2,000.
D: may keep the $5,000 deposit, because the original buyer breached the contract.

The explanation for the answer is:

The correct answer is D. A party to a land sale contract may seek either damages or specific performance in the event of a breach by the other party. In this case, the original buyer has breached the sale contract, and the owner kept the original buyer's $5,000 deposit as damages. Although many students will incorrectly choose answer C because the owner only lost $2,000 on the eventual sale, the correct answer is D. A seller is entitled to keep a buyer's deposit as liquidated damages following the buyer's breach of contract, as long as that deposit was 10% of the sale price or less. The facts indicate that original buyer's deposit was $5,000, or 4.5% of the sale price, so the owner is entitled to keep it as liquidated damages. Therefore, choice D is correct, and choices A, B, and C are incorrect.

Question 811 - Real Property - Contract

The question was:

A man was the owner of Blackacre, an undeveloped city lot. The man and a neighbor executed a written document in which the man agreed to sell Blackacre to the neighbor and the neighbor agreed to buy Blackacre from the man for $100,000; the document did not provide for an earnest money down payment. The man recorded the document, as authorized by statute.

The man orally gave the neighbor permission to park his car on Blackacre without charge prior to the closing. Thereafter, the neighbor frequently parked his car on Blackacre.

Another property came on the market that the neighbor wanted more than Blackacre. The neighbor decided to try to escape any obligation to the man.

The neighbor had been told that contracts for the purchase and sale of real property require consideration and concluded that because he had made no earnest money down payment, he could refuse to close and not be liable. The neighbor notified the man of his intention not to close and, in fact, did refuse to close on the date set for the closing. The man brought an appropriate action to compel specific performance by the neighbor.

If the man wins, it will be because

A: the neighbor's use of Blackacre for parking constitutes part performance.
B: general contract rules regarding consideration apply to real estate contracts.
C: the doctrine of equitable conversion applies.
D: the document was recorded.

The explanation for the answer is:

B is correct. Keep in mind that with many questions you may be able to determine the correct answer by simply eliminating all the incorrect choices. Right off the bat, we see that B is a true statement of law, though it is very general. Therefore, we must check the other three to determine if there is a better choice available. In this question, answer A is incorrect because the performance the neighbor was obligated to make was paying the man $100,000 - use of the lot in no way constitutes a part performance of that payment. Answer C is incorrect because the doctrine of equitable conversion is irrelevant to the facts presented - it addresses who bears the risk for damage or destruction of a property after the sale contract is executed. Answer D is incorrect because the recording of the contract is irrelevant to the man's right to seek specific performance. Answer B is a correct statement of law, and having eliminated all three other choices we know that there is no better, more specific answer available. Therefore, it is clear that answer B is correct.

Question 817 - Real Property - Contract

The question was:

A farmer leased a barn to his neighbor for a term of three years. The neighbor took possession of the barn and used it for his farming purposes. The lease made the farmer responsible for structural repairs to the barn, unless they were made necessary by actions of the neighbor.

One year later, the farmer conveyed the barn and its associated land to a buyer "subject to the lease to [the neighbor]." The neighbor paid the next month's rent to the buyer. The next day a portion of an exterior wall of the barn collapsed because of rot in the interior structure of the wall. The wall had appeared to be sound, but a competent engineer, on inspection, would have discovered its condition. Neither the buyer nor the neighbor had the barn inspected by an engineer. The neighbor was injured as a result of the collapse of the wall.

The farmer had known that the wall was dangerously weakened by rot and needed immediate repairs, but had not told the neighbor or the buyer. There is no applicable statute.

The neighbor brought an appropriate action against the farmer to recover damages for the injuries he sustained. The buyer was not a party.

Which of the following is the most appropriate comment concerning the outcome of this action?

A: The neighbor should lose, because the buyer assumed all of the farmer's obligations by reason of the neighbor's assignment to her.
B: The neighbor should recover, because there is privity between lessor and lessee and it cannot be broken unilaterally.
C: The neighbor should recover, because the farmer knew of the danger but did not warn the neighbor.
D: The neighbor should lose, because he failed to inspect the barn.

The explanation for the answer is:

Answer C is correct because the farmer was responsible for disclosing the danger to his neighbor. A lessor must warn the lessee of existing defects in the premises of which the lessor is aware, and which he knows that the lessee is not likely to discover on a reasonable inspection. Failure to disclose the danger will make the lessor liable for any injury resulting from the condition. Since the farmer knew about the rot in the wall, and knew that wall appeared to be sound, he was obligated to warn the neighbor at the time the lease was entered into. Therefore he will be held liable for the neighbor's injury.

Answer A is incorrect because even though the buyer assumed all of the farmer's obligations related to the lease, the farmer is still liable for his failure to disclose the dangerous condition at the start of the original lease. Answer B is incorrect because while there is privity of contract between the neighbor and the farmer, it is irrelevant to determining the farmer's liability for the damages arising from his failure to warn about the dangerous wall. Answer D is incorrect because the defect would only have been apparent upon inspection by a competent engineer, a layperson's inspection would not have been sufficient.

Question 829 - Real Property - Titles

The question was:

An owner conveyed Blackacre to a buyer by a warranty deed. The buyer recorded the deed four days later. After the conveyance but prior to the buyer's recording of the deed, a lender properly filed a judgment against the owner.

The two pertinent statutes in the jurisdiction provide the following: 1) any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered, and 2) no conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law.

The recording act has no provision for a grace period.

The lender joined both the owner and the buyer in an appropriate action to foreclose the judgment lien against Blackacre.

If the lender is unsuccessful, it will be because

A: the owner's warranty of title to the buyer defeats the lender's claim.
B: the lender is not a purchaser for value.
C: any deed is superior to a judgment lien.
D: four days is not an unreasonable delay in recording a deed.

The explanation for the answer is:

Answer B is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded their deed without notice of earlier purchasers. To be a BFP, a party must give *value* for their interest in the land. In this case, the lender's interest arises from a judgment lien against the owner rather than payment of valuable consideration. Therefore, the lender is not protected by the recording statute. Because the buyer is protected by the statute, the owner no longer holds an interest in Blackacre, and there is no property for the lien to attach to. Answer B is therefore correct.

Answer A is incorrect because under a notice statute, the lender will prevail over the buyer, assuming the lender is a BFP (a purchaser for value), because the buyer is a grantee who failed to record before the judgment lien was properly filed. Answer C is incorrect because a deed is not always superior to a judgment lien. Answer D is a correct statement, but is irrelevant to why the lender will be unsuccessful.

Question 836 - Real Property - Rights in Land

The question was:

An owner owned 80 acres of land, fronting on a town road. Two years ago, the owner sold to a buyer the back 40 acres. The 40 acres sold to the buyer did not adjoin any public road. The owner's deed to the buyer expressly granted a right-of-way over a specified strip of the owner's retained 40 acres, so the buyer could reach the town road. The deed was promptly and properly recorded.

Last year, the buyer conveyed the back 40 acres to a doctor. They had discussed the right-of-way over the owner's land to the road, but the buyer's deed to the doctor made no mention of it. The doctor began to use the right-of-way as the buyer had, but the owner sued to enjoin such use by the doctor.

The court should decide for

A: the doctor, because he has an easement by implication.
B: the doctor, because the easement appurtenant passed to him as a result of the buyer's deed to him.
C: the owner, because the buyer's easement in gross was not transferable.
D: the owner, because the buyer's deed failed expressly to transfer the right-of-way to the doctor.

The explanation for the answer is:

B is correct. The easement described in the facts is an easement appurtenant - one that benefits a specific piece of land. An easement appurtenant will automatically run with the land, and after being recorded for the first time does not need to be re-identified in any deeds accompanying later conveyances. Therefore, answer B is correct and answer D is incorrect. Answer C is incorrect because the buyer did not have an easement in gross. Although answer A is legally correct, answer B is a better answer, because the easement appurtenant would have passed to the buyer even if he did not have an easement by implication.

Question 845 - Real Property - Ownership

The question was:

Sixty years ago by a properly executed and recorded deed, a grandfather conveyed Greenacre, a tract of land: "To my grandson for life, then to my grandson's widow for her life, then to my grandson's child or children in equal shares." At that time, the grandson was six years old.

Shortly thereafter, the grandfather died testate. His grandson was his only heir at law. The grandfather's will left his entire estate to First Church.

Twenty-five years ago, when he was 41, the grandson married Maria who was then 20 years old; they had one child. Maria and the child were killed in an automobile accident three years ago when the child was 21. The child died testate, leaving his entire estate to the American Red Cross. His father (the grandson) was the child's sole heir at law.

Two years ago, the grandson married Zelda. They had no children. This year, the grandson died testate, survived by his widow, Zelda, to whom he left his entire estate.

The common-law Rule Against Perpetuities is unchanged by statute in the jurisdiction.

In an appropriate action to determine the ownership of Greenacre, the court should find that title is vested in

A: First Church, because the widow of the grandson was unborn at the time of conveyance and, hence, the remainder violated the Rule Against Perpetuities.
B: Zelda, because her life estate and her inheritance from the grandson (who was the grandfather's sole heir at law and who was the child's sole heir at law) merged the entire title in her.
C: the American Red Cross, because the child had a vested remaider interest (as the only child of the grandson) that he inherited, the life estate to the grandson's widow being of no force and effect.
D: Zelda for life under the terms of the grandfather's deed, with the remainder to the American Red Cross as the successor in interest to the grandson's only child.

The explanation for the answer is:

The correct answer is D. This is a tricky question because many of the facts are designed to create concerns that the Greenacre conveyance violates the Rule Against Perpetuities (RAP). The general rule is that "No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest." It is important to remember, however, that vested interests are not subject to the RAP. Interests are vested if there is no condition attached which must be satisfied; the holder of the vested remainder has a present or certain right to take possession of the property when the prior estates terminate. The grandfather conveyed his entire interest in the tract of land, leaving no reversion or contingent remainder. Consequently, despite the fact that the grandson was only six years old and that his future wife was not yet born at the time the grandfather conveyed the property to him, all interests would clearly vest or fail within the grandson's life. The grandson is the measuring life. Upon the grandson's death, there would be no possibility of an additional wife or children arriving more than 21 years later. Consequently, Zelda's interest in a life estate vested upon her marriage to the grandson. Likewise, the grandson's child's interest vested upon his birth; his future possessory interest did not lapse upon his death but rather was devisable. D is the correct answer because it acknowledges the vested state of the interests. A, B and C are incorrect.

A is incorrect. First Church has no interest in the tract of land. It was deeded away before the grandfather's death and was not part of his estate upon his death. In addition, the grandfather deeded away his entire interest, creating vested interests that were not subject to the Rule Against Perpetuities.

B is incorrect. The child's future possessory interest vested upon his birth and was devisable by him, whether or not he survived his father's widow. Zelda is only entitled to her life estate.

C is incorrect. While the child's vested interest would only become a present possessory right after Zelda's death, it did not require survival and was devisable to the Red Cross. Zelda's life estate future interest,

Question 845 - Real Property - Ownership

however, became vested upon her marriage to the grandson. The American Red Cross, as the child's successor in interest, will only be entitled to present possession upon Zelda's death.

Question 848 - Real Property - Contract

The question was:

A seller entered into a written contract with a purchaser to sell Greenacre. The contract was dated June 19 and called for a closing date on the following August 19. There was no other provision in the contract concerning the closing date. The contract contained the following clause: "subject to the purchaser obtaining a satisfactory mortgage at the current rate." On the date provided for closing, the purchaser advised the seller that he was unable to close because his mortgage application was still being processed by a bank. The seller desired to declare the contract at an end and consulted his attorney in regard to his legal position.

Which of the following are relevant in advising the seller of his legal position?

A: Only the Statute of Frauds and whether time is of the essence
B: Only the parol evidence rule and specific performance
C: Only the parol evidence rule, the Statute of Frauds, and specific performance
D: The parol evidence rule, the Statute of Frauds, specific performance, and whether time is of the essence.

The explanation for the answer is:

The correct answer is D. The parol evidence rule, the Statute of Frauds, specific performance, and whether time is of the essence are all relevant concepts in determining the seller's legal position. Whether "time is of the essence" is relevant because where a sale contract indicates that time is of the essence, failure to perform on the scheduled closing date negates the failing party's right to enforce the contract at a later date. The Statute of Frauds is always relevant to land sale contracts, as it requires that all such contracts must be in writing. Specific performance is relevant as it is one of the two remedies (the other being damages) available to the purchaser if the seller attempts to get out of the contract. Finally, it may be relevant for the seller to introduce parol evidence relating to the purchaser's mortgage application in order to show that the seller's duty of performance is excused by the failure of a condition precedent (this, however, depends upon whether or not the contract stated that "time is of the essence").

Question 858 - Real Property - Mortgages

The question was:

A man owns his home, Blackacre, which was mortgaged to a bank by a duly recorded purchase money mortgage. Last year, the man replaced all of Blackacre's old windows with new windows.

Each new window consists of a window frame with three inserts: regular windows, storm windows, and screens. The windows are designed so that each insert can be easily inserted or removed from the window frame without tools to adjust to seasonal change and to facilitate the cleaning of the inserts.

The new windows were expensive. The man purchased them on credit, signed a financing statement, and granted a security interest in the windows to a vendor, the supplier of the windows. The vendor promptly and properly filed and recorded the financing statement before the windows were installed. The man stored the old windows in the basement of Blackacre.

This year, the man has suffered severe financial reverses and has defaulted on his mortgage obligation to the bank and on his obligation to the vendor.

The bank brought an appropriate action to enjoin the vendor from its proposed repossession of the window inserts.

In the action, the court should rule for

A: The bank, because its mortgage was recorded first.
B: The bank, because the windows and screens, no matter their characteristics, are an integral part of a house.
C: The vendor, because the inserts are removable.
D: The vendor, because the availabilty of the old windows enables the bank to return Blackacre to its original condition.

The explanation for the answer is:

Answer C is correct. Although the bank's mortgage has priority over the vendor's, whether the vendor can remove the window inserts depends upon whether they are regarded as fixtures. The bank's mortgage on the home will be limited to the structure and any items attached to it that have become fixtures. A court will consider the degree to which the item is attached, whether there will be damage to the structure if the item is removed, and whether general custom dictates that such an item stays with a property or goes out with the seller. Considering that there is a low degree of attachment (the inserts are "easily removable") and no damage will result from the removal, the inserts will not be considered fixtures and the vendor may enforce its lien. Therefore, answer C is correct, and A, B, and D are incorrect.

Question 862 - Real Property - Contract

The question was:

The owner of Greenacre, a tract of land, mortgaged Greenacre to a bank to secure his preexisting obligation to the bank. The mortgage was promptly and properly recorded. The owner and a buyer then entered into a valid written contract for the purchase and sale of Greenacre, which provided for the transfer of "a marketable title, free of encumbrances." The contract did not expressly refer to the mortgage.

Shortly after entering into the contract, the buyer found another property that much better suited her needs and decided to try to avoid her contract with the owner. When the buyer discovered the existence of the mortgage, she asserted that the title was encumbered and that she would not close. The owner responded by offering to provide for payment and discharge of the mortgage at the closing from the proceeds of the closing. The buyer refused to go forward, and the owner brought an appropriate action against her for specific performance.

If the court holds for the owner in this action, it will most likely be because

A: the mortgage is not entitled to priority because it was granted for preexisting obligations.
B: the doctrine of equitable conversion supports the result.
C: The owner's arrangements for the payment of the mortgage fully satisfied the owner's obligation to deliver marketable title.
D: the existence of the mortgage was not the buyer's real reason for refusing to close.

The explanation for the answer is:

C is the correct answer. In general, a seller is required to provide marketable title on the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictive covenants and easements. Where the contract does not state that "time is of the essence," then the seller is required to provide marketable title within a reasonable time after the scheduled closing date. If the seller is able to do so, the buyer has no grounds for refusing to perform and the seller may sue for damages or specific performance. In this case, the owner has made arrangements that will render the title free of all encumbrances (the mortgage) at the closing. Therefore, the owner was entitled to bring an action for specific performance, and will succeed in that action because he can provide marketable title.

Answer A is incorrect because priority is irrelevant to the marketability issue at hand. Answer B is incorrect because the doctrine of equitable conversion is irrelevant to the facts presented - it addresses who bears the risk for damage or destruction of a property after the sale contract is executed. Answer D is incorrect because a buyer's "real reason" for refusing to close, whatever it may be, does not affect the parties' respective rights and responsibilities at law.

Question 869 - Real Property - Titles

The question was:

Eight years ago, a doctor, prior to moving to a distant city, conveyed Blackacre, an isolated farm, to his son by a quitclaim deed. His son paid no consideration. The son, who was 19 years old, without formal education, and without experience in business, took possession of Blackacre and operated the farm but neglected to record his deed. Subsequently, the doctor conveyed Blackacre to a buyer by warranty deed. The buyer, a substantial land and timber promoter, paid valuable consideration for the deed to him. He was unaware of the son's possession, his quitclaim deed, or his relationship to the doctor. The buyer promptly and properly recorded his deed and began removing timber from the land.

Immediately upon learning of the buyer's actions, the son recorded his deed and brought an appropriate action to enjoin the buyer from removing the timber and to quiet title. The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law." In this action, the buyer should

A: prevail, because a warranty deed for valuable consideration takes priority over a quitclaim deed without consideration.
B: prevail, because the doctor's subsequent conveyance to the buyer revoked the gift to the son.
C: lose, because the son's possession charged the buyer with notice.
D: lose, because the equities favor the son.

The explanation for the answer is:

C is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded his or her deed without notice of earlier purchasers. In this case, the facts state that the buyer was "unaware of the son's possession." The buyer, however, is charged with inquiry notice by virtue of the fact that the son's possession and use of the land was open and notorious. Inquiry notice requires the buyer to make reasonable inquiries, and he is charged with knowing any information the inquiries would yield. Under this theory, the buyer's notice prevents him from being protected by the recording statute, so the correct answer is C.

A is incorrect because it is not true. What is important under the statute is whether the buyer qualifies as a BFP, not what type of deed was executed. B is incorrect because this fact pattern does not deal with a gift situation. Even though the son paid no valuable consideration for the land, there is no indication that the doctor intended to make the land a gift to his son. D is incorrect because it is a very subjective response. Whether the equities favor the son is not a question that can be answered by the simple facts of the fact pattern.

Question 870 - Real Property - Titles

The question was:

A man owned Blackacre, a tract of undeveloped land. Blackacre abuts Whiteacre, a tract of land owned by the state's governmental energy agency. At Whiteacre, the agency has operated a waste-to-electricity recycling facility for 12 years. Blackacre and Whiteacre are in a remote area and Whiteacre is the only developed parcel of real estate within a ten-mile radius. The boundary line between Blackacre and Whiteacre had never been surveyed or marked on the face of the earth.

During the past 12 years, some of the trucks bringing waste to the agency facility have dumped their loads so that the piles of waste extend from Whiteacre onto a portion of Blackacre. However, prior to the four-week period during each calendar year when the agency facility is closed for inspection and repairs, the waste piles are reduced to minimal levels so that during each of the four-week closures no waste was, in fact, piled on Blackacre. Neither the man nor any representative of the agency knew the facts about the relation of the boundary line to the waste piles.

The time for acquiring title by adverse possession in the jurisdiction is ten years.

Last year, the man died, and his son succeeded him as the owner of Blackacre. The son became aware of the facts, demanded that the agency stop using Blackacre for the piling of waste, and, when the agency refused his demand, brought an appropriate action to enjoin any such use of Blackacre in the future.

If the agency prevails in that action, it will be because

A: the facts constitute adverse possession and title to the portion of Blackacre concerned has vested in the agency.
B: The man's failure to keep himself informed as to the agency's use of Blackacre and his failure to object constituted implied consent to the continuation of that use.
C: the interest of the public in the conversion of waste to energy overrides any entitlement of the son to equitable remedies.
D: the power of eminent domain of the state makes the claim of the son moot.

The explanation for the answer is:

A is correct. To obtain land through adverse possession, for the length of the statutory period a party must: 1) have actual physical possession or occupancy of the land, 2) maintain that possession continuously and without interruption, 3) exclude others from possession, 4) have "hostile" possession (be there without permission), and 5) maintain "open and notorious" possession. In this case, the agency had actual physical possession of the land beneath the waste piles, maintained that possession continuously for 12 years, excluded the man and his son from using that area of land, did so without permission, and did so openly (as the piles were large and were not concealed). Although the agency took the waste out of Blackacre for four-weeks each year, the possession is consistent with the type the usual owner of Blackacre would make, since it is an undeveloped tract and would reasonably be used as a waste dump and cleaned once a year. Therefore, answer A is correct.

Answer B is incorrect because failure to discover the presence of a trespasser does not constitute consent to that trespasser's use of the land. Answer C is incorrect because without an exercise of eminent domain by the government, the son's rights do not automatically become subordinate to it. Answer D is incorrect because the state never exercised its eminent domain powers.

Question 873 - Real Property - Ownership

The question was:

The owner of Greenacre, a tract of land, owned it in fee simple. Five years ago, he executed and delivered to a woman an instrument in the proper form of a warranty deed that conveyed Greenacre to the woman "for and during the term of her natural life." No other estate or interest or person taking an interest was mentioned. The woman took possession of Greenacre and has remained in possession.

Fifteen months ago, the owner died, leaving a will that has been duly admitted to probate. The will, *inter alia* had the following provision:

"I devise Greenacre to my best friend for her natural life and from and after her death to my second best friend, his heirs and assigns, forever."

Administration of the owner's estate has been completed. The best friend claims the immediate right to possession of Greenacre. The second best friend also asserts a right to immediate possession.

In an appropriate lawsuit to which the woman, the best friend, and the second best friend are parties, who should be adjudged to have the right to immediate possession?

A: The woman, because no subsequent act of the owner would affect her life estate.
B: The best friend, because the owner's will was the final and definitive expression of his intent.
C: The best friend, because the woman's estate terminated with the death of the owner.
D: The second best friend, because the woman's estate terminated with the owner's death and all that the owner had was the right to transfer his reversion in fee simple.

The explanation for the answer is:

Answer A is correct. In this case, the woman and the best friend both have a life estate, and the second best friend has a vested remainder. The woman's grant was for the term of her natural life only, which means that the land reverts back to the owner upon the woman's death. If the owner were deceased by the time that occurred, the land would go to the owner's estate. The owner, however, devised a life estate to the best friend in his will. Therefore, upon the woman's death, the land will go to the best friend for the rest of her life, and then to the second best friend permanently. The woman's life estate is unaffected by any action the owner took after he conveyed it to her, so answer A is correct. Answers C and D are incorrect because the woman's life estate is measured by her own life, not the owner's. Although answer B correctly states that the owner's will was the final expression of his intent, that fact does not alter the woman's life estate in any way, it simply determines where the land goes after she dies.

Question 895 - Real Property - Titles

The question was:

A woman entered into a valid written contract to purchase Blackacre, a large tract of land, from its owner for its fair market value of $50,000. The contract was assignable by the woman. The woman duly notified the owner to convey title to the woman and a friend of the woman whom the woman had not seen for many years.

When the woman learned that the friend would have to sign certain documents in connection with the closing, she asked her brother to attend the closing and pretend to be the friend. The woman and her brother attended the closing, and the owner executed an instrument in the proper form of a deed, purporting to convey Blackacre to the woman and the friend, as tenants in common. The brother pretended that he was the friend, and he signed the friend's name to all the required documents. The woman provided the entire $50,000 consideration for the transaction. The deed was promptly and properly recorded.

Unknown to the woman or her brother, the friend had died several months before the closing. The friend's will, which was duly probated, devised "All my real estate to my nephew" and the residue of his estate to the woman.

The woman and the nephew have been unable to agree as to the status or disposition of Blackacre. The nephew brought an appropriate action against the owner and the woman to quiet title to an undivided one-half interest in Blackacre.

The court should hold that legal title to Blackacre is vested

A: all in the owner.
B: all in the woman.
C: one-half in the woman and one-half in the owner.
D: one-half in the woman and one-half in the nephew.

The explanation for the answer is:

C is correct. A deed to a dead person cannot convey good title. Therefore, while the woman obtained an interest in the property for herself when the deed was delivered to her, the interest that she fraudulently attempted to convey to the friend by having her brother forge the friend's name remained the owner's property and was never passed. The friend never held an interest in the property, and thereby had no interest in it to bequeath to the nephew. Because the execution of the contract was only valid with regard to the woman, she and the owner both hold a one-half interest in the property, so answer C is correct, and A, B, and D are incorrect.

Question 901 - Real Property - Contract

The question was:

The owner of Blackacre, a residential lot improved with a dwelling, conveyed it for a valuable consideration to an investor. The dwelling had been constructed by a prior owner. The investor had inspected Blackacre prior to the purchase and discovered no defects. After moving in, the investor became aware that sewage seeped into the basement when the toilets were flushed. The owner said that this defect had been present for years and that he had taken no steps to hide the facts from the investor. The investor paid for the necessary repairs and brought an appropriate action against the owner to recover his cost of repair.

If the investor wins, it will be because

A: the owner failed to disclose a latent defect.
B: the investor made a proper inspection.
C: the situation constitutes a health hazard.
D: the owner breached the implied warranty of habitability and fitness for purpose.

The explanation for the answer is:

Answer A is correct. With regard to defects on a property, sellers are required to disclose all known defects that will not be open and obvious to a buyer, and are prohibited from concealing such defects in any way. The fact that sewage seeps into the basement of the Blackacre house would not be obvious to a buyer unless it was occurring during the time he was viewing or inspecting the house. The owner had an obligation to make the investor aware of this hidden or "latent" defect, so answer A is correct.

Answer B is incorrect because an inspection will not reveal a latent defect. Answer C is incorrect because it is the fact that the defect was hidden, not the fact that it poses a health hazard, that is relevant to determining whether the owner failed to fulfill his obligation to disclose. Answer D is incorrect because an implied warranty of habitability or fitness for particular purpose applies only to new construction being sold by a builder or developer.

Question 905 - Real Property - Rights in Land

The question was:

A plaintiff and a defendant own adjacent parcels of land. On each of their parcels was a low-rise office building. The two office buildings were of the same height.

Last year the defendant decided to demolish the low-rise office building on her parcel and to erect a new high-rise office building of substantially greater height on the parcel as permitted by the zoning and building ordinances. She secured all the governmental approvals necessary to pursue her project.

As the defendant's new building was in the course of construction, the plaintiff realized that the shadows it would create would place her (the plaintiff's) building in such deep shade that the rent she could charge for space in her building would be substantially reduced.

The plaintiff brought an appropriate action against the defendant to enjoin the construction in order to eliminate the shadow problem and for damages. The plaintiff presented uncontroverted evidence that her evaluation as to the impact of the shadow on the fair rental value of her building was correct. There is no statute or ordinance (other than the building and zoning ordinances) that is applicable to the issues before the court.

The court should

A: grant to the plaintiff the requested injunction.
B: award the plaintiff damages measured by the loss of rental value, but not an injunction.
C: grant judgment for the defendant, because she had secured all the necessary governmental approvals for the new building.
D: grant judgment for the defendant, because the plaintiff has no legal right to have sunshine continue to reach the windows of her building.

The explanation for the answer is:

D is correct. While a landowners possess a number of rights with regard to their property, as well as the areas above and below it, there are no rights to sunlight, fresh air, or view. Furthermore, there are no facts to suggest the creation of a negative easement or restrictive covenant, which would give the plaintiff a right to sunlight. As such, the plaintiff has no legal basis for a cause of action against the defendant. Answer D is correct, and answers A, B, and C are incorrect.

Question 916 - Real Property - Contract

The question was:

A seller owned Blackacre, improved with an aging four-story warehouse. The warehouse was built to the lot lines on all four sides. On the street side, recessed loading docks permitted semi-trailers to be backed in. After the tractors were unhooked, the trailers extended into the street and occupied most of one lane of the street. Over the years, as trailers became larger, the blocking of the street became more severe. The municipality advised the seller that the loading docks could not continue to be used because the trailers blocked the street; it gave the seller 90 days to cease and desist.

During the 90 days, the seller sold and conveyed Blackacre by warranty deed for a substantial consideration to a buyer. The problem of the loading docks was not discussed in the negotiations.

Upon expiration of the 90 days, the municipality required the buyer to stop using the loading docks. This action substantially reduced the value of Blackacre.

The buyer brought an appropriate action against the seller seeking cancellation of the deed and return of all monies paid.

Such action should be based upon a claim of

A: failure to disclose.
B: breach of the covenant of warranty.
C: failure of consideration.
D: mutual mistake.

The explanation for the answer is:

A is correct. Because the seller knew of a pending cease and desist order, that the order was not apparent, and that the order seriously reduced the value of the property, the seller's failure to disclose the pending cease and desist order will serve as the basis for the buyer's cause of action and answer A is correct. Answer B is incorrect because the seller has not breached the covenant of warranty - that is a covenant relating to the *title* to the property. The facts do not indicate that the seller gave bad title. Answer C is incorrect because valuable consideration for the transaction was provided by both parties. Answer D is incorrect because the facts indicate that the seller was aware of the impending restriction on trailer use, so there was no mistake on the seller's part.

Question 919 - Real Property - Ownership

The question was:

The owner of Profitacre executed an instrument in the proper form of a deed, purporting to convey Profitacre "to my brother for life, then to my nephew in fee simple." The brother, who is the owner's brother and nephew's father, promptly began to manage Profitacre, which is valuable income-producing real estate. The brother collected all rents and paid all expenses, including real estate taxes. The nephew did not object, and this state of affairs continued for five years until 1987. In that year, the brother executed an instrument in the proper form of a deed, purporting to convey Profitacre to his girlfriend. The nephew, no admirer of the girlfriend, asserted his right to ownership of Profitacre. The girlfriend asserted her ownership and said that if the nephew had any rights he was obligated to pay real estate taxes, even though the brother had been kind enough to pay them in the past. Income from Profitacre is ample to cover expenses, including real estate taxes.

In an appropriate action to determine the rights of the parties, the court should decide

A: The brother's purported deed forfeited his life estate, so the nephew owns Profitacre in fee simple.
B: The girlfriend owns an estate for her life, is entitled to all income, and must pay real estate taxes; the nephew owns the remainder interest.
C: The girlfriend owns an estate for the life of the brother, is entitled to all income, and must pay real estate taxes; the nephew owns the remainder interest.
D: The girlfriend owns an estate for the life of the brother and is entitled to all income; the nephew owns the remainder interest, and must pay real estate taxes.

The explanation for the answer is:

The correct answer is C. The following estates are identified by the facts: the brother held a life estate; he conveyed it to the girlfriend, who owns a life estate for the rest of *the brother's* life; the nephew holds a vested remainder, which is unaffected by the conveyance from the brother to the girlfriend.

TAXES - The girlfriend incorrectly argues that the nephew is required to pay real estate taxes on the property. As a life tenant, the girlfriend has a duty not to commit voluntary or permissive waste relevant to the property during her life tenancy. A failure to keep the property in repair, to pay real estate taxes, or to pay interest on any mortgage on the property will all constitute permissive waste. Therefore, it is the girlfriend's responsibility, not the nephew's, to pay the taxes, and answer D is incorrect.

OWNERSHIP - the nephew incorrectly argues that the brother's life estate was forfeited by his conveyance to the girlfriend. As a life tenant, the brother has the right to keep the property for life, as well as the right to convey it to any person that he wishes to. Any conveyance he makes, however, is only good for as long as the measuring life, the brother, is alive. As such, the brother's conveyance to the girlfriend was allowed and answer A is incorrect. Answer B is incorrect because the girlfriend owns an estate for the length of the brother's life, not the length of her own life.

Question 920 - Real Property - Ownership

The question was:

A brother and sister were jointly in possession of Greenacre in fee simple as tenants in common. They joined in a mortgage of Greenacre to a local bank. The brother erected a fence along what he considered to be the true boundary between Greenacre and the adjoining property, owned by the neighbor. Shortly thereafter, the brother had an argument with his sister and gave up his possession of Greenacre. The debt secured by the mortgage has not been paid.

The neighbor surveyed his land and found that the fence erected a year earlier by the brother did not follow the true boundary. Part of the fence was within Greenacre. Part of the fence encroached on the neighbor's land. The neighbor and the sister executed an agreement fixing the boundary line in accordance with the fence constructed by the brother. The agreement, which met all the formalities required in the jurisdiction, was promptly and properly recorded.

A year after the agreement was recorded, the brother temporarily reconciled his differences with his sister and resumed joint possession of Greenacre. Thereafter, the brother repudiated the boundary line agreement and brought an appropriate action against the neighbor and the sister to quiet title along the original true boundary.

In such action, the brother will

A: win, because the local bank was not a party to the agreement.
B: win, because one tenant in common cannot bind another tenant in common to a boundary line agreement.
C: lose, because the agreement, as a matter of law, was mutually beneficial to the sister and the brother.
D: lose, because the sister was in sole possession of the premises at the time the agreement was signed.

The explanation for the answer is:

B is correct. This question highlights the need to carefully identify which facts relate to the principle of law being tested and which are superfluous. A cursory analysis of the question may lead some students to incorrectly choose answer D because the facts state that the brother gave up possession, and answer D suggests that the sister wins because she was in sole possession. It is, however, *ownership*, not possession, that is relevant to answering the question presented. The brother and sister's legal rights as tenants in common are unaffected by the degree to which they each physically possess the land. Although any one co-tenant has the right to possess the entire property, that possession in no way alters their ownership rights or those of the other co-tenants. Because the sister's possession of Greenacre in no way serves to give her the right to enter agreements individually that would affect the rights of her co-tenant, answer B is correct, and answers A, C, and D are incorrect.

Question 928 - Real Property - Mortgages

The question was:

A woman owned Woodsedge, a tract used for commercial purposes, in fee simple and thereafter mortgaged it to a bank. She signed a promissory note secured by a duly executed and recorded mortgage. There was no "due on sale" clause, that is, no provision that, upon sale, the whole balance then owing would become due and owing. The woman conveyed Woodsedge to a friend "subject to a mortgage to the bank, which the grantee assumes and agrees to pay." The friend conveyed Woodsedge to his son "subject to an existing mortgage to the bank." A copy of the note and the mortgage that secured it had been exhibited to each grantee.

After the son made three timely payments, no further payments were made by any party. In fact, the real estate had depreciated to a point where it was worth less than the debt.

There is no applicable statute or regulation.

In an appropriate foreclosure action, the bank joined the woman, her friend, and the son as defendants. At the foreclosure sale, although the fair market value for Woodsedge in its depreciated state was obtained, a deficiency resulted.

The bank is entitled to collect a deficiency judgment against

A: the woman only.
B: the woman and the friend only.
C: the friend and his son only.
D: the woman, the friend, and the son.

The explanation for the answer is:

B is correct. The mortgagor of a property is free to transfer title to that property BUT: 1) the mortgagor remains personally liable on the mortgage, and 2) all subsequent grantees take the property subject to the mortgage. Further, subsequent grantees do not become personally liable on the mortgage unless they explicitly assume the mortgage. Therefore, the mortgagor will always be personally liable on the mortgage, all subsequent grantees who assume the mortgage will be personally liable on it, and all subsequent grantees (whether they assume the mortgage or not) can lose the property through foreclosure if the mortgage is not paid. In this case, the woman is the mortgagor and remains personally liable on it regardless of her transfers. The friend explicitly assumed and agreed to pay the mortgage in his transaction with the woman, so the friend is also personally liable. The son, however, took the property subject to the mortgage but did *not* assume it, therefore he is not personally liable on it, and is only at risk to the extent that he will lose the property if the mortgage is foreclosed upon. Therefore, choice B is correct, and choices A, C, and D are incorrect.

Question 935 - Real Property - Mortgages

The question was:

The owner of Blackacre needed money. Blackacre was fairly worth $100,000, so the owner tried to borrow $60,000 from a lender on the security of Blackacre. The lender agreed, but only if the owner would convey Blackacre to the lender outright by warranty deed, with the lender agreeing orally to reconvey to the owner once the loan was paid according to its terms. The owner agreed, conveyed Blackacre to the lender by warranty deed, and the lender paid the owner $60,000 cash. The lender promptly and properly recorded the owner's deed.

Now, the owner has defaulted on repayment with $55,000 still due on the loan. The owner is still in possession.

Which of the following best states the parties' rights in Blackacre?

A: The lender's oral agreement to reconvey is invalid under the Statute of Frauds, so the lender owns Blackacre outright.
B: The owner, having defaulted, has no further rights in Blackacre, so the lender may obtain summary eviction.
C: The attempted security arrangement is a creature unknown to the law, hence a nullity; the lender has only a personal right to $55,000 from the owner.
D: The lender may bring whatever foreclosure proceeding is appropriate under the laws of the jurisdiction.

The explanation for the answer is:

D is correct. The lender does not own Blackacre outright; he holds an equitable mortgage. An equitable mortgage is created by the conveyance of an absolute deed as security for a loan, along with a promise by the grantee to reconvey the deed to the grantor once the loan is paid off. Because the lender's interest is a mortgage on the property rather than outright ownership of it, his only remedy following the owner's default is foreclosure of the property pursuant to the equitable mortgage, so answer D is correct. Answer A is incorrect because the agreement to reconvey is not a land sale contract and is therefore not subject to the Statute of Frauds. Answer B is incorrect because a court must determine the rights of a mortgagor and mortgagee in relation to a default on the mortgage, and the vehicle for that determination is a foreclosure proceeding, not an eviction proceeding. C is incorrect because the arrangement is an equitable mortgage, not a nullity.

Question 953 - Real Property - Ownership

The question was:

A testator owned Blackacre, a vacant one-acre tract of land. Five years ago, he executed a deed conveying Blackacre to "the church for the purpose of erecting a church building thereon." Three years ago, the testator died leaving his son as his sole heir at law. His duly probated will left "all my estate, both real and personal, to my friend."

The church never constructed a church building on Blackacre and last month the church, for valid consideration, conveyed Blackacre to a developer.

The developer brought an appropriate action to quiet title against the son, the friend, and the church, and joined the appropriate state official. Such official asserted that a charitable trust was created which has not terminated.

In such action, the court should find that title is now in

A: the developer.
B: the son.
C: the friend.
D: the state official.

The explanation for the answer is:

A is correct. Pay close attention to the language used in the conveyance to the church. The testator's language did not create a fee simple subject to a condition subsequent (through the use of "but if" or "upon condition that") or a fee simple determinable (through the use of "while", "during", or "until"). Instead, the testator used the language "for the purpose that", which has no effect on the title, so the church held fee simple absolute. Therefore, after the church transferred title to the developer, the developer held in fee simple. Thus, the developer holds valid legal title to the land, making A the correct answer, while B, C, and D are incorrect.

Question 960 - Real Property - Ownership

The question was:

A banker owned a commercial property, Eastgate, consisting of a one-story building rented to various retail stores and a very large parking lot. Two years ago, the banker died and left Eastgate to her nephew for life, with remainder to her godson, his heirs and assigns. The nephew was 30 years old and the godson was 20 years old when the banker died. The devise of Eastgate was made subject to any mortgage on Eastgate in effect at the time of the banker's death.

When the banker executed her will, the balance of the mortgage debt on Eastgate was less than $5,000. A year before her death, the banker suffered financial reverses; and in order to meet her debts, she had mortgaged Eastgate to secure a loan of $150,000. The entire principal of the mortgage remained outstanding when she died. As a result, the net annual income from Eastgate was reduced not only by real estate taxes and regular maintenance costs, but also by the substantial mortgage interest payments that were due each month.

The nephew was very dissatisfied with the limited benefit that he was receiving from the life estate. When, earlier this year, Acme, Inc., proposed to purchase Eastgate, demolish the building, pay off the mortgage, and construct a 30-story office building, the nephew was willing to accept Acme's offer. However, the godson adamantly refused the offer, even though he, as the remainderman, paid the principal portion of each monthly mortgage amortization payment. The godson was independently wealthy and wanted to convert Eastgate into a public park when he became entitled to possession.

When Acme realized that the godson would not change his mind, Acme modified its proposal to a purchase of the life estate of the nephew. Acme was ready to go ahead with its building plans, relying upon a large life insurance policy on the nephew's life to protect it against the economic risk of his death. The nephew's life expectancy was 45 years.

When the godson learned that the nephew had agreed to Acme's modified proposal, the godson brought an appropriate action against them to enjoin their carrying it out.

There is no applicable statute.

The best argument for the godson is that

A: Acme cannot purchase the nephew's life estate, because life estates are not assignable.
B: the proposed demolition of the building constitutes waste.
C: the godson's payment of the mortgage principal has subrogated him to the nephew's rights as a life tenant and bars the nephew's assignment of the life estate without the godson's consent.
D: continued existence of the one-story building is more in harmony with the ultimate use as a park than the proposed change in use.

The explanation for the answer is:

B is correct. The facts indicate that the nephew is a life tenant on the property, with the godson holding a vested remainder. A life tenant has a duty not to commit voluntary or permissive waste with respect to the property during their life tenancy. A failure to keep the property in repair, to pay taxes on the property, or pay interest on any mortgage on the property all constitute permissive waste. Voluntary waste, on the other hand, is an affirmative act that serves to somehow damage the land. This "damage," however, is not necessarily an act that reduces the *value* of the land. For example, a life tenant's affirmative act of changing the basic use of the land during his tenancy would be characterized as "damage" to the land that constitutes voluntary waste *even if the land value increased as a result*. The life tenant is held liable to the remainderman for any waste during his or her life tenancy. In this case, the best argument available to the godson (of the choices given) is that building a 30 story building constitutes a change in use sufficient to establish voluntary waste, so answer B is the best choice.

Answer A is incorrect because life estates *are*assignable. Answer C is incorrect because the godson is

Question 960 - Real Property - Ownership

obligated to make the mortgage principal payments by virtue of his status as a remainderman; those payments do not allow him to negate the nephew's right to assign. Answer D is incorrect because it is the *present* use, not a contemplated future use, that is relevant to determining whether voluntary waste occurred.

Question 968 - Real Property - Ownership

The question was:

A farmer owned Purpleacre, a tract of land, in fee simple. By will duly admitted to probate after his death, the farmer devised Purpleacre to "any wife who survives me with remainder to such of my children as are living at her death."

The farmer was survived by his wife and by three adult children. Thereafter, one of the children died and by will duly admitted to probate devised his entire estate to a friend. The remaining two siblings were the deceased sibling's heirs at law.

Later the wife died. In an appropriate lawsuit to which the two remaining siblings and the friend are parties, title to Purpleacre is at issue.

In such lawsuit, judgment should be that title to Purpleacre is in

A: The two siblings and the friend, because the earliest vesting of remainders is favored and reference to the wife's death should be construed as relating to time of taking possession.
B: The two siblings and the friend, because the provision requiring survival of children violates the Rule Against Perpetuities since the surviving wife might have been a person unborn at the time of writing of the will.
C: The two remaining siblings, because the deceased sibling's remainder must descend by intestacy and is not devisable.
D: The two remaining siblings, because the remainders were contingent upon surviving the life tenant.

The explanation for the answer is:

D is correct. If the facts of this question had simply stated that the farmer's will created a remainder in "my children," then the deceased sibling's estate would have been entitled to a share of Purpleacre, and the friend would have inherited that interest by virtue of the deceased sibling's will. However, the remainder only exists in the children *who were living at the time of the wife's death*. Therefore, only the two remaining siblings held a remainder in Purpleacre. The deceased sibling's estate did not include a remainder in Purpleacre because he predeceased the farmer's wife, so the deceased sibling had no interest to bequeath to his friend. Therefore, answer D is correct, and answers A, B, and C are incorrect.

Question 997 - Real Property - Titles

The question was:

The owner in fee simple of Richacre, a large parcel of vacant land, executed a deed purporting to convey Richacre to her nephew. The owner told her nephew, who was then 19, about the deed and said that she would give it to him when he reached 21 and had received his undergraduate college degree. Shortly afterward the nephew searched the owner's desk, found and removed the deed, and recorded it.

A month later, the nephew executed an instrument in the proper form of a warranty deed purporting to convey Richacre to his fiancee. He delivered the deed reciting that it was given in exchange for "$1 and other good and valuable consideration," and explained that to make it valid the fiancee must pay him $1. The fiancee, impressed and grateful, did so. Together, they went to the recording office and recorded the deed. The fiancee assumed the nephew had owned Richacre, and knew nothing about the nephew's dealing with the owner. Neither the owner's deed to the nephew nor the nephew's deed to his fiancee mentioned anything about any conditions.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

Two years passed. The nephew turned 21, then graduated from college. At the graduation party, the owner was chatting with the fiancee and for the first time learned the foregoing facts.

The age of majority in the jurisdiction is 18 years old.

The owner brought an appropriate action against the fiancee to quiet title to Richacre.

The court will decide for

A: the owner, because the nephew's deed to the fiancee before the nephew satisfied the owner's conditions was void, because the fiancee had paid only nominal consideration.
B: the owner, because her deed to the nephew was not delivered.
C: the fiancee, because the nephew has satisfied the owner's oral conditions.
D: the fiancee, because the deed to her was recorded.

The explanation for the answer is:

B is correct. Intent, rather than mere physical possession, is determinative with regard to the purported delivery of a deed. In this case, it is clear from the facts that the owner's intent was that title would not pass to the nephew until he reached age 21 and had earned a college degree. The nephew's physical possession of and recording of the deed contrary to the owner's intent does not negate that intent. Therefore, the deed was never delivered to the nephew, and answer B is correct.

Answer A is incorrect because consideration is *not* required in relation to delivery of a deed. Answer C is incorrect because it is the failure of delivery, not the failure of a condition, that negates the nephew's conveyance. Answer D is incorrect because the fiancee's recording of a deed that was never delivered to the nephew is inadequate to secure an ownership interest in the property.

Question 1006 - Real Property - Ownership

The question was:

A brother and a sister acquired title in fee simple to Blackacre, as equal tenants in common, by inheritance from their aunt. During the last 15 years of her lifetime, the aunt allowed the brother to occupy an apartment in the house on Blackacre, to rent the other apartment in the house to various tenants, and to retain the rent. The brother made no payments to the aunt; and since the aunt's death 7 years ago, he has made no payments to his sister. For those 22 years, the brother has paid the real estate taxes on Blackacre, kept the building on Blackacre insured, and maintained the building. At all times, the sister has lived in a distant city and has never had anything to do with the aunt, her brother, or Blackacre.

Recently, the sister needed money to run her business and demanded that her brother join her in selling Blackacre. He refused.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years. There is no other applicable statute.

The sister brought an appropriate action against her brother for partition. The brother asserted all available defenses and counterclaims.

In that action, the court should

A: deny partition and find that title has vested in the brother by adverse possession.
B: deny partition, confirm the tenancy in common, but require an accounting to determine if either the sister or brother is indebted to the other on account of the rental payment, taxes, insurance premiums, and maintenance costs.
C: grant partition and require, as an adjustment, an accounting to determine if either the sister or brother is indebted to the other on account of the rental payments, taxes, insurance premiums, and maintenance costs.
D: grant partition to the sister and brother as equal owners, but without an accounting.

The explanation for the answer is:

C is correct. This question requires you to understand the rights and duties of tenants in common. Answers A and B are incorrect because a tenant in common always has the right to *partition*, even where another tenant is opposed to doing so. Answer D is incorrect because co-tenants have a right to *contribution* from each other for certain expenditures such as taxes, mortgage payments and necessary repairs, and an accounting is necessary to determine the sister and brother's respective contribution rights. Answer C correctly states that a partition must be granted and the contribution rights determined.

Question 1012 - Real Property - Contract

The question was:

A hockey fan had a season ticket for her home team's hockey games at the local arena(Section B, Row 12, Seat 16). During the intermission between the first and second periods of a game, the hockey fan solicited signatures for a petition urging that the coach of the hockey team be fired.

The local arena and hockey team are owned by a privately owned entity. As evidenced by many prominently displayed signs, this entity prohibits all solicitations anywhere within the arena at any time and in any manner. The privately owned entity notified the hockey fan to cease her solicitation of signatures.

The hockey fan continued to seek signatures on her petition during the hockey team's next three home games at the arena. Each time, the entity notified the hockey fan to cease such solicitation. The hockey fan announced her intention to seek signatures on her petition again during the hockey team's next home game at the arena. The entity wrote a letter informing her that her season ticket was canceled and tendered a refund for the unused portion. The hockey fan refused the tender and brought an appropriate action to establish the right to attend all home games.

In this action, the court will decide for

A: the privately owned entity, because it has a right and obligation to control activities on realty it owns and has invited the public to visit.
B: the privately owned entity, because the hockey fan's ticket to hockey games created only a license.
C: the hockey fan, because, having paid value for the ticket, her right to be present cannot be revoked.
D: the hockey fan, because she was not committing a nuisance by her activities.

The explanation for the answer is:

Answer B is correct because a ticket is a mere license rather than a property interest. It gives the ticket holder a contractual right to use some portion of the issuer's property for a fixed period of time, but does not afford that ticket holder any interest in the property. While the license may be revoked by the issuer, that issuer will be liable for damages if it does so wrongfully. Further, because the ticket is a contractual right, a ticket holder's remedy for wrongful revocation of a ticket will be in contract, rather than property law. In this case, the hockey fan's ticket was a mere license issued by the privately owned entity.

The hockey fan did not, however, possess an irrevocable license, so answer C is incorrect. Answer D is incorrect because the privately owned entity may revoke the hockey fan's license regardless of whether she is committing a nuisance. Answer A is incorrect because the privately owned entity's right to revoke the specific license it issued to the hockey fan, rather than a general right to police its facility, is the basis for overcoming the hockey fan's claim.

Question 1014 - Real Property - Mortgages

The question was:

Several years ago, a carpenter purchased Goldacre, financing a large part of the purchase price by a loan from a bank that was secured by a mortgage. The carpenter made the installment payments on the mortgage regularly until last year. Then the carpenter persuaded a friend to buy Goldacre, subject to the mortgage to the bank. They expressly agreed that the friend would not assume and agree to pay the carpenter's debt to the bank. The carpenter's mortgage to the bank contained a due-on-sale clause stating, "If Mortgagor transfers his/her interest without the written consent of Mortgagee first obtained, then at Mortgagee's option the entire principal balance of the debt secured by this Mortgage shall become immediately due and payable." However, without seeking the bank's consent, the carpenter conveyed Goldacre to the friend, the deed stating in pertinent part ". . . subject to a mortgage to the bank [giving details and recording data]."

The friend took possession of Goldacre and made several mortgage payments, which the bank accepted. Now, however, neither the friend nor the carpenter has made the last three mortgage payments. The bank has brought an appropriate action against the friend for the amount of the delinquent payments.

In this action, judgment should be for

A: the friend, because she did not assume and agree to pay the carpenter's mortgage debt.
B: the friend, because she is not in privity of estate with the bank.
C: the bank, because the carpenter's deed to the friend violated the due-on-sale clause.
D: the bank, because the friend is in privity of estate with the bank.

The explanation for the answer is:

A is correct. The mortgagor of a property is generally free to transfer title to that property BUT: 1) the mortgagor remains personally liable on the mortgage, and 2) all subsequent grantees take the property subject to the mortgage. Further, subsequent grantees do not become personally liable on the mortgage unless they explicitly assume the mortgage. Therefore, the mortgagor will always be personally liable on the mortgage, all subsequent grantees who assume the mortgage will be personally liable on it, and all subsequent grantees (whether they assume the mortgage or not) can lose the property through foreclosure if the mortgage is not paid. The facts state that the friend did not assume the mortgage, so she has no personal liability to the bank with regard to mortgage payments. Although she voluntarily made such payments for a few months, she was under no obligation to do so. Therefore, answer A is correct. The bank, however, has the right to foreclose on the mortgage if the payments are not made, so the friend stands to lose the property unless either she or the carpenter makes the payments. Further, the carpenter's conveyance without the bank's permission allows the bank, pursuant to the due-on-sale clause, to demand immediate payment of the entire outstanding mortgage balance.

Note that answers B and D are incorrect because privity is irrelevant to determining liability relevant to the mortgage. Answer C is incorrect because the violation of the due-on-sale clause simply gave the bank the right to demand immediate payment of the principal from the carpenter; the friend's rights are unaffected by the clause.

Question 1023 - Real Property - Titles

The question was:

A corporation owned Blackacre in fee simple, as the real estate records showed. The corporation entered into a valid written contract to convey Blackacre to an individual buyer. At closing, the buyer paid the price in full and received an instrument in the proper form of a deed, signed by duly authorized corporate officers on behalf of the corporation, purporting to convey Blackacre to the buyer. The buyer did not then record the deed or take possession of Blackacre.

Next, a man (who had no knowledge of the contract or the deed) obtained a substantial money judgment against the corporation. Then, the buyer recorded the deed from the corporation. Thereafter, the man properly filed the judgment against the corporation.

A statute of the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

Afterward, the buyer entered into a written contract to convey Blackacre to a developer. The developer objected to the buyer's title and refused to close.

The recording act of the jurisdiction provides: "Unless the same be recorded according to law, no conveyance shall be good against subsequent purchasers for value and without notice."

The buyer brought an appropriate action to require the developer to complete the purchase contract.

The court should decide for

A: the developer, because the man's judgment was obtained before the buyer recorded the deed from the corporation.
B: the developer, because even though the corporation's deed to the buyer prevented the man's judgment from being a lien on Blackacre, the man's filed judgment poses a threat of litigation.
C: the buyer, because she recorded her deed before the man filed his judgment.
D: the buyer, because she received the deed from the corporation before the man filed his judgment.

The explanation for the answer is:

D is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded his or her deed without notice of earlier purchasers. To be a BFP, a party must give value for his or her interest in the land. The facts state that the buyer, a BFP, received the deed from the corporation before the judgment was filed, which indicates she could not have had notice of it. She then recorded her deed, still having no notice of any judgments against the corporation. Her lack of notice means that she is protected against the man's subsequent claim to an interest in the property. Further, her protection under the recording act means that she will be able to provide good title to the developer at closing; she may therefore compel the developer to make the purchase, and answer D is correct.

Answers A and C are incorrect because timing is irrelevant under a notice act, and recording first does not suffice to meet the act's requirements. Note, however, that if the act quoted in the facts was a *race* act rather than a notice act, answer C would be correct. Answer B is incorrect because the man's lien did not attach to Blackacre - that means the risk of litigation is between the man and the corporation, not the man and the owner of Blackacre.

Question 1036 - Real Property - Rights in Land

The question was:

A businessman owned five adjoining rectangular lots, numbered 1 through 5 inclusive, all fronting on Main Street. All of the lots are in a zone limited to one- and two-family residences under the zoning ordinance. Two years ago, the businessman conveyed Lots 1, 3, and 5. None of the three deeds contained any restrictions. Each of the new owners built a one-family residence.

One year ago, the businessman conveyed Lot 2 to a recent college graduate. The deed provided that each of the recent graduate and the businessman, their respective heirs and assigns, would use Lots 2 and 4 respectively only for one-family residential purposes. The deed was promptly and properly recorded. The graduate built a one-family residence on Lot 2.

Last month, the businessman conveyed Lot 4 to a law student. The deed contained no restrictions. The deed from the businessman to the recent college graduate was in the title report examined by the law student's lawyer. The law student obtained a building permit and commenced construction of a two-family residence on Lot 4.

The recent graduate, joined by the owners of Lots 1, 3, and 5, brought an appropriate action against the law student to enjoin the proposed use of Lot 4, or, alternatively, to recover damages caused by the law student's breach of covenant.

Which is the most appropriate comment concerning the outcome of this action?

A: All plaintiffs should be awarded their requested judgment for injunction because there was a common development scheme, but award of damages should be denied to all.
B: The recent college graduate should be awarded an appropriate remedy, but recovery by the other plaintiffs is doubtful.
C: Injunction should be denied, but damages should be awarded to all plaintiffs, measured by diminution of market value, if any, suffered as a result of the proximity of the law student's two-family residence.
D: All plaintiffs should be denied any recovery or relief because the zoning preempts any private scheme of covenants.

The explanation for the answer is:

Answer B is correct. The restriction in the deeds to Lots 2 and 4 constitutes an equitable servitude. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent that the restriction be enforceable by subsequent grantees 2) that the subsequent grantee had notice of the servitude, and 3)that the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds ("the recent college graduate and the businessman, and *all their respective heirs and assigns*") indicates that the restriction is intended to bind subsequent grantees. The college graduate's recorded deed (that showed up in the title search) provided the law student with record notice of the restriction. And a restriction on what can be built on the land clearly touches and concerns that land, so the equitable servitude is enforceable. The restriction, however, may only be enforced against the law student by *the college graduate*.

Some students will incorrectly choose answer A based on the belief that the five lots constitute a common subdivision. For an equitable servitude to bind an entire subdivision, however, it *must* be found in the common building plan for that subdivision. There is no such plan according to the facts presented, so only the owner of a lot with a deed identifying the restriction may enforce that restriction. Answer C is incorrect because the law student is free to build anything on her lot that she chooses to, so long as it does not violate the zoning or building codes. Answer D is incorrect because there is no indication in the facts that such a zoning preemption exists.

Question 1043 - Real Property - Contract

The question was:

A landlord owned Blackacre in fee simple. Three years ago, the landlord and a tenant agreed to a month-to-month tenancy with the tenant paying the landlord rent each month. After six months of the tenant's occupancy, the landlord suggested to the tenant that she could buy Blackacre for a monthly payment of no more than her rent. The landlord and the tenant orally agreed that the tenant would pay $25,000 in cash, the annual real estate taxes, the annual fire insurance premiums, and the costs of maintaining Blackacre, plus the monthly mortgage payments that the landlord owed on Blackacre. They further orally agreed that within six years the tenant could pay whatever mortgage balances were then due and the landlord would give her a warranty deed to the property. The tenant's average monthly payments did turn out to be the same as her monthly rent.

The tenant fully complied with all of the obligations she had undertaken. She made some structural modifications to Blackacre. Blackacre is now worth 50% more than it was when the landlord and the tenant made their oral agreement. The tenant made her financing arrangements and was ready to complete the purchase of Blackacre, but the landlord refused to close. The tenant brought an appropriate action for specific performance against the landlord to enforce the agreement.

The court should rule for

A: The landlord, because the agreements were oral and violated the statute of frauds.
B: The landlord, subject to the return of the $25,000, because the arrangement was still a tenancy.
C: The tenant, because the doctrine of part performance applies.
D: The tenant, because the statute of frauds does not apply to oral purchase and sale agreements between landlords and tenants in possession.

The explanation for the answer is:

Answer C is correct. Although a contract for the sale of land normally requires a writing signed by the party to be charged, the doctrine of *part performance* creates an exception to that rule. The elements of the doctrine are 1) a definite and unambiguous oral contract, and 2) a performance by the putative buyer that clearly indicates that a contract existed. Performances that suffice to take the contract for the sale of real property out of the statute of frauds include a) making improvements to the property, b) paying the purchase price in full, and c) taking possession of the property. Any *one* of these performances, along with a clear and definite oral contract, will establish a contract through part performance. In this case, the terms and conditions of the oral contract are clear - the landlord does not deny those conditions; he simply refuses to comply with them. The tenant's possession of and improvements to the property are performances that indicate a contract existed - it is assumed a party would not make such performances in the absence of an agreement. Therefore, answer C is correct.

A is incorrect. The statute of frauds is applicable to the transfer of land, requiring that the agreement be in writing, contain the signature of both parties, and contain the essential terms of the agreement. The only time when this requirement is excused is when part performance takes a contract out of the situation, as is the case in this fact pattern. Thus, A is incorrect.

B is also incorrect. The tenant's part performance (part performance can consist of possession, substantial performance, or payment of purchase price) and the existence of an uncontested oral contract remove this scenario from tenancy characterization.

D is incorrect because it misstates the law. The statute of frauds always applies to the sale of land unless preempted by part performance on an oral contract.

Question 1046 - Real Property - Mortgages

The question was:

A brother and sister owned Greenacre in fee simple as tenants in common, each owning an undivided one-half interest. The brother and sister joined in mortgaging Greenacre to a private lender by a properly recorded mortgage that contained a general warranty clause. The brother became disenchanted with land-owning and notified his sister that he would no longer contribute to the payment of installments due to the private lender. After the mortgage was in default and the private lender made demand for payment of the entire amount of principal and interest due, the sister tendered to the private lender, and the private lender deposited, a check for one-half of the amount due the private lender. The sister then demanded a release of her undivided one-half interest. The private lender refused to release any interest in Greenacre. The sister promptly brought an action against the private lender to quiet title to an undivided one-half interest in Greenacre.

In such action, the sister should

A: lose, because the private lender's title had been warranted by an express provision of the mortgage.
B: lose, because there was no redemption from the mortgage.
C: win, because the sister is entitled to marshalling.
D: win, because the cotenancy of the mortgagors was in common and not joint.

The explanation for the answer is:

B is correct. Although the brother and sister each independently own an undivided one-half interest in Greenacre, they chose to mortgage the property *jointly*. Therefore, the private lender holds a mortgage to all of Greenacre, for which the brother and the sister are jointly and severally liable. The joint mortgage represents a contractual agreement between the brother and the sister as a single entity on the one hand, and the private lender on the other. The sister's making a payment of half of what is owed on the mortgage has the same legal effect as paying off half of any debt - *the rest of the debt is still owed*. To protect her one-half interest, the sister should have obtained a mortgage on only her own interest. That would have left her rights unaffected by any actions or inactions of the brother. Because the mortgage was entered jointly, the private lender is not required to release any of the interest she holds in Greenacre. Therefore, answer B is correct, and A, C, and D are incorrect.

Question 1056 - Real Property - Ownership

The question was:

A land owner owned in fee simple Lots 1 and 2 in an urban subdivision. The lots were vacant and unproductive. They were held as a speculation that their value would increase. The land owner died and, by his duly probated will, devised the residue of his estate (of which Lots 1 and 2 were part) to his sister for life with remainder in fee simple to his niece. The land owner's executor distributed the estate under appropriate court order, and notified the sister that future real estate taxes on Lots 1 and 2 were her responsibility to pay.

Except for the statutes relating to probate and those relating to real estate taxes, there is no applicable statute.

The sister failed to pay the real estate taxes due for Lots 1 and 2. To prevent a tax sale of the fee simple, the niece paid the taxes and demanded that the sister reimburse her for same. When the sister refused, the niece brought an appropriate action against the sister to recover the amount paid.

In such action, the niece should recover

A: the amount paid, because a life tenant has the duty to pay current charges.
B: the present value of the interest that the amount paid would earn during the sister's lifetime.
C: nothing, because the sister's sole possession gave the right to decide whether or not taxes should be paid.
D: nothing, because the sister never received any income from the lots.

The explanation for the answer is:

D is correct. The following estates are identified by the facts: the sister held a life estate, and the niece held a vested remainder. A life tenant has a duty not to commit voluntary or permissive waste relevant to the property during the life tenancy. Failures to keep the property in repair, to pay real estate taxes, or to pay interest on any mortgage on the property will all constitute permissive waste. That responsibility, however, is limited; it only extends as far as the amount of income the land generates. Therefore, while it is the sister's responsibility and not the niece's to pay the taxes, the sister is only responsible for paying taxes in an amount equal to the income she receives from the property, which in this case is $0. Because the niece has no recourse against the sister, answers A and B are incorrect and answer D is correct. Note that answer C is incorrect because possession is irrelevant to a life tenant's responsibilities - the sister is charged with those responsibilities whether she physically possesses the land or not.

Question 1066 - Real Property - Ownership

The question was:

By a writing, an owner leased his home, Blackacre, to a tenant for a term of three years, ending December 31 of last year, at a rent of $1,000 per month. The lease provided that the tenant could sublet and assign.

The tenant lived in Blackacre for one year and paid the rent promptly. After one year, the tenant leased Blackacre to a friend for one year at a rent of $1,000 per month.

The friend took possession of Blackcare and lived there for six months but, because of her unemployment, paid no rent. After six months, on June 30 the friend abandoned Blackacre, which remained vacant for the balance of that year. The tenant again took possession of Blackacre at the beginning of the third and final year of the term but paid the owner no rent.

At the end of the lease term, the owner brought an appropriate action against both the tenant and the friend to recover $24,000, the unpaid rent.

In such action the owner is entitled to a judgment

A: against the tenant individually for $24,000, and no judgment against the friend.
B: against the tenant individually for $18,000, and against the friend individually for $6,000.
C: against the tenant for $12,000, and against the tenant and the friend jointly and severally for $12,000.
D: against the tenant individually for $18,000, and against the tenant and the friend jointly and severally for $6,000.

The explanation for the answer is:

A is correct. This question requires you to distinguish between an assignment and a sublease. An assignment of a lease by a tenant occurs where the tenant transfers all his rights and duties under a lease to another party (an "assignee") for the *entire* length of time remaining on the lease. By contrast, a sublease is a transfer by a tenant to another party (a "sublessee") for a time period *shorter* than the time remaining on the lease. In this case, the facts indicate that the tenant transferred the unit to the friend for a limited time, specifically, months 13 through 24 of the tenant's lease from the owner. This means that the friend was merely a sublessee rather than an assignee. A sublessee has *no liability* in relation to the original landlord, because there is neither privity of contract nor privity of estate between those parties. Therefore, only the tenant is liable to the owner for the 24 months of rent that have not been paid. Therefore, answer A is correct, and answers B, C, and D are incorrect.

Question 1068 - Real Property - Rights in Land

The question was:

A landowner owned Lot 1 in fee simple in a properly approved subdivision, designed and zoned for industrial use. His neighbor owned the adjoining Lot 2 in the same subdivision. The plat of the subdivision was recorded as authorized by statute.

Twelve years ago, the landowner erected an industrial building wholly situated on Lot 1 but with one wall along the boundary common with Lot 2. The construction was done as authorized by a building permit, validly obtained under applicable statutes, ordinances, and regulations. Further, the construction was regularly inspected and passed as being in compliance with all building code requirements.

Lot 2 remained vacant until six months ago, when the neighbor began excavation pursuant to a building permit authorizing the erection of an industrial building situated on Lot 2 but with one wall along the boundary common with Lot 1. The excavation caused subsidence of a portion of Lot 1 that resulted in injury to the landowner's building. Further investigation determined that the subsidence would have occurred even if there was not a building on Lot 1. The excavation was not done negligently or with any malicious intent to injure. In the jurisdiction, the time to acquire title by adverse possession or rights by prescription is 10 years.

The landowner brought an appropriate action against the neighbor to recover damages resulting from the injuries in the building on Lot 1.

In such lawsuit, judgment should be for

A: The landowner, because the subsidence would have occurred without the weight of the building on Lot 1.
B: The landowner, because a right for support, appurtenant to Lot 1, had been acquired by adverse possession or prescription.
C: The neighbor, because Lots 1 and 2 are urban land, as distinguished from rural land and, therefore, under the circumstances the landowner had the duty to protect any improvements on Lot 1.
D: The neighbor, because the construction and the use to be made of the building were both authorized by the applicable law.

The explanation for the answer is:

A is correct. A landowner has the right to lateral (side) support of its land from all neighboring parcels of land. This right, however, extends only to the *land* itself, not the structures built upon it. This means that if a landowner excavates its own land, and collapse of the neighboring land and a structure built on that land occurs, the excavating landowner is liable *only* if the neighboring land would have collapsed even without the weight of the structure. In other words, the excavator must leave just enough support in place that the neighboring land *without any structures on it* would not collapse. Because the subsidence on Lot 1 would have occurred even without the weight of the landowner's building, answer A is correct.

Answer B is incorrect because landowners have an absolute right to support from adjacent lots. Answers C and D are incorrect because the location of or zoning laws applicable to a plot of land have no relevance to the adjacent landowner's support rights.

Question 1078 - Real Property - Ownership

The question was:

The owner of Blackacre, a single-family residence, conveyed a life estate in Blackacre to a landlord fifteen years ago.

Fourteen years ago, the landlord, who had taken possession of Blackacre, leased Blackacre to a tenant for a term of 15 years at the monthly rent of $500.

Eleven years ago, the landlord died intestate leaving her son as her sole heir.

The tenant regularly paid rent to the landlord and, after the landlord's death, to the son until last month.

The period in which to acquire title by adverse possession in the jurisdiction is 10 years.

In an appropriate action, the tenant, the original owner, and the son each asserted ownership of Blackacre.

The court should hold that title in fee simple is in

A: the original owner, because the owner held a reversion and the landlord has died.
B: the son, because the landlord asserted a claim adverse to the owner when the landlord executed a lease to the tenant.
C: the son, because the tenant's occupation was attributable to the son, and the landlord died 11 years ago.
D: the tenant, because of the tenant's physical occupancy and because the tenant's term ended with the landlord's death.

The explanation for the answer is:

C is correct. The interest that the original owner conveyed to the landlord was a life estate. As such, any right the landlord (or her assigns) had in the property ended upon her death. The son, having no legal right to the owner's property after the landlord's death, collected rent on that property from the tenant for eleven years. The son's actions have earned him an ownership interest in the property through adverse possession. To obtain land through adverse possession, a party must for the length of the statutory period: 1) have actual physical possession or occupancy of the land, 2) maintain that possession continuously and without interruption, 3) exclude others from possession, 4) have "hostile" possession (be there without permission), and 5) maintain "open and notorious" possession. In this case, the son held the property without permission, did so exclusively, openly and notoriously (by allowing his tenant but no other parties to physically possess that land and pay him rent), and did so without interruption for the length of the statutory period (which in this jurisdiction is ten years).

Note that answer A is incorrect because the owner's reversion interest was lost to the son through adverse possession. Answer B is incorrect because as a life tenant, the landlord was free to convey the property to whomever she wished during her life tenancy. Answer D is incorrect because the tenant's payments of rent indicate his possession was not "hostile." Answer D would have been correct, however, if the tenant had not paid rent to the son.

Question 1087 - Real Property - Titles

The question was:

A woman owned Blackacre, her home. Her daughter lived with her and always referred to Blackacre as "my property." Two years ago, the daughter, for a valuable consideration, executed and delivered to her boyfriend an instrument in the proper form of a warranty deed purporting to convey Blackacre to the boyfriend in fee simple, reserving to herself an estate for two years in Blackacre. The boyfriend promptly and properly recorded the deed.

One year ago, the woman died and by will, duly admitted to probate, left her entire estate to the daughter.

One month ago, the daughter, for a valuable consideration, executed and delivered to a buyer an instrument in the proper form of a warranty deed purporting to convey Blackacre to the buyer, who promptly and properly recorded the deed. The daughter was then in possession of Blackacre and the buyer had no actual knowledge of the deed to the boyfriend. Immediately thereafter, the daughter gave possession to the buyer.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

Last week, the daughter fled the jurisdiction. Upon learning the facts, the buyer brought an appropriate action against the boyfriend to quiet title to Blackacre.

If the buyer wins, it will be because

A: the daughter had nothing to convey to the boyfriend two years ago.
B: the daughter's deed to the boyfriend was not to take effect until after the daughter's deed to the buyer.
C: the buyer was first in possession.
D: the daughter's deed to the boyfriend was not in the buyer's chain of title.

The explanation for the answer is:

D is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded their deed without notice of earlier purchasers. To be a BFP, a party must give value for their interest in the land. In this case, the buyer is a BFP who recorded without notice of any earlier purchasers. He did not have record notice, because a record search of the chain of title for the deed he received would not have included the boyfriend's deed. Further, he did not have constructive notice, because the daughter's occupancy of the land would lead him to believe that she was the rightful owner as she purported to be. If a judgment is entered in favor of the buyer, it will be because he recorded without notice of earlier purchasers and is protected by the recording act. Therefore, answer D is correct.

Note that answers B and C are incorrect because the time of possession or transfer is irrelevant to determining rights under a notice act. Answer A is incorrect because the daughter purported to convey to the boyfriend two years *after* the time he physically received the deed. By that time, the woman had died and the daughter did have a valid interest to convey.

There are two chains of title in this question. One from the woman to the daughter (upon the woman's death) and from the daughter to the buyer. The second chain of title began when the daughter conveyed to the boyfriend before she had title to Blackacre. That deed, though recorded, would not fall in the buyer's chain of title. This is a very tricky question.

Question 1100 - Real Property - Contract

The question was:

A banker owned Goldacre, a tract of land, in fee simple. The banker and a buyer entered into a written agreement under which the buyer agreed to buy Goldacre for $100,000, its fair market value. The agreement contained all the essential terms of a real estate contract to sell and buy, including a date for closing. The required $50,000 down payment was made. The contract provided that in the event of the buyer's breach, the banker could retain the $50,000 deposit as liquidated damages.

Before the date set for the closing in the contract, the buyer died. On the day that the administratrix of the buyer's estate was duly qualified, which was after the closing date, the administratrix made demand for return of the $50,000 deposit. The banker responded by stating that she took such demand to be a declaration that the administratrix did not intend to complete the contract and that the banker considered the contract at an end. The banker further asserted that she was entitled to retain, as liquidated damages, the $50,000. The reasonable market value of Goldacre had increased to $110,000 at that time.

The administratrix brought an appropriate action against the banker to recover $50,000. In answer, the banker made no affirmative claim but asserted that she was entitled to retain the $50,000 as liquidated damages as provided in the contract.

In such lawsuit, judgment should be for

A: the administratrix, because the provision relied upon by the banker is unenforceable.
B: the administratrix, because the death of the buyer terminated the contract as a matter of law.
C: the banker, because the court should enforce the express agreement of the contracting parties.
D: the banker, because the doctrine of equitable conversion prevents termination of the contract upon the death of a party.

The explanation for the answer is:

A is correct. A seller is entitled to keep a buyer's deposit as liquidated damages following the buyer's breach of the contract, as long as that amount appears to be reasonable in light of the seller's anticipated and actual damages. Many courts will uphold the retention of a deposit of 10% of the sale price or less without inquiry to its reasonableness. The facts indicate that the sale price of Goldacre was set at the "reasonable market value," which was $100,000 at the time of contracting and had increased to $110,000 by the time set for closing. Therefore, the banker did not have actual damages, because she can sell it for $10,000 more, and the most the banker can legally retain is $11,000. Thus, she will not be able to enforce a liquidated damages clause in any higher amount.

The administratrix has not sought specific performance of the contract, so the only issue being considered by the court is liquidated damages, so answer A is correct. Answer B is incorrect because the doctrine of equitable conversion would keep the contract alive after the buyer's death, and the banker would close with the buyer's estate. Answer D is incorrect because the banker is not seeking to prevent termination of the contract (through specific performance); she is merely seeking damages. Answer C is incorrect because the court will not enforce an agreement that violates the law, even if both parties have assented to it.

Question 1104 - Real Property - Titles

The question was:

A landowner owned Blackacre in fee simple, as the land records showed, when he contracted to sell Blackacre to a buyer. Two weeks later, the buyer paid the agreed price and received a warranty deed. A week thereafter, when neither contract nor deed had been recorded and while the owner remained in possession of Blackacre, a creditor properly filed a money judgment against the owner. She knew nothing of the buyer's interest.

A statute in the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

The creditor brought an appropriate action to enforce her lien against Blackacre in the buyer's hands.

If the court decides for the buyer, it will most probably be because

A: the doctrine of equitable conversion applies.
B: the jurisdiction's recording act does not protect creditors.
C: The owner's possession gave the creditor constructive notice of the buyer's interest.
D: The buyer was a purchaser without notice.

The explanation for the answer is:

B is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded her deed without notice of earlier purchasers. To be a BFP, a party must give *value* for her interest in the land. Although the facts indicate that the creditor filed her judgment without actual notice or record notice of the conveyance (it had not been recorded yet), the recording act in this jurisdiction protects *purchasers for value*, meaning BFP's. Therefore, if the buyer wins, it is most likely because the creditor was not a BFP, making answer B the correct choice.

Answer A is incorrect because equitable conversion is only relevant with regard to the time period between contracting and closing. Answer C is simply illogical - the owner's possession gave the creditor constructive notice of *the owner's* interest, not the buyer's. Answer D is a red herring - there is nothing that the buyer would have had notice of that is relevant to the issue.

Question 1112 - Real Property - Ownership

The question was:

A farmer and a rancher owned Greenacre, a large farm, in fee simple as tenants in common, each owning an undivided one-half interest. For five years the farmer occupied Greenacre and conducted farming operations. The farmer never accounted to the rancher for any income, but the farmer did pay all real estate taxes when the taxes were due and kept the buildings located on Greenacre insured against loss from fire, storm, and flood. The rancher lived in a distant city and was interested only in realizing a profit from the sale of the land when market conditions produced the price the rancher wanted.

The farmer died intestate, survived only by the farmer's sole heir. Thereafter, the sole heir occupied Greenacre but was inexperienced in farming operations. The result was a financial disaster. The sole heir failed to pay real estate taxes for two years. The appropriate governmental authority held a tax sale to recover the taxes due. At such sale the rancher was the only bidder and obtained a conveyance from the appropriate governmental authority upon payment of an amount sufficient to discharge the amounts due for taxes, plus interest and penalties, and the costs of holding the tax sale. The amount paid was one-third of the reasonable market value of Greenacre.

Thereafter, the rancher instituted an appropriate action against the sole heir to quiet title in and to recover possession of Greenacre. The sole heir asserted all defenses available to her, but refused to pay the farmer any money.

Except for the statutes related to real estate taxes and tax sales, there is no applicable statute.

In this lawsuit, the rancher is entitled to a decree quieting title so that the rancher is the sole owner in fee simple of Greenacre

A: because the rancher survived the farmer.
B: because the farmer's sole heir defaulted in the obligations undertaken by the farmer.
C: because the farmer's sole heir refused to pay the rancher one-half of the reasonable market value of Greenacre.
D: because the farmer's sole heir refused to pay the rancher one-half of the amount the rancher paid for the tax deed.

The explanation for the answer is:

D is correct. This question requires you to understand the rights and duties of tenants in common. Co-tenants have a right to *contribution* from each other for certain expenditures such as taxes, mortgage payments and necessary repairs. This is logical considering that even though a co-tenant only owns part of the land, each of these expenditures must be paid in full - i.e. you cannot pay half of the taxes or mortgage payment on a property, or fix one-half of an item needing repair. An *accounting* is generally the means employed to determine each co-tenant's respective contribution rights. In this case, an accounting is unnecessary because the property is generating no income, and there is only one expenditure to divide - the cost of the tax deed. The farmer's sole heir must pay one-half of the cost of that deed if she wishes to retain her one-half interest in the property, so answer D is correct.

Answer A would be correct if the farmer and the rancher had held the land in joint tenancy, but the facts indicate that they were tenants in common. Answer B is incorrect because neither the farmer nor the sole heir was obligated to care for the land and meet all the expenditures related to it on their own, even though the farmer chose to do so for several years. Answer C is incorrect because the reasonable market value of the land is irrelevant - the sole heir is only must contribute an amount equal to one-half of whatever amount the rancher spent.

Question 1118 - Real Property - Titles

The question was:

A woman owned several vacant lots in a subdivision. She obtained a $50,000 loan from a bank and executed and delivered to the bank a promissory note and mortgage describing Lots 1, 2, 3, 4, and 5. The mortgage was promptly and properly recorded.

Upon payment of $10,000, the woman obtained a release of Lot 2 duly executed by the bank. She altered the instrument of release to include Lot 5 as well as Lot 2 and recorded it. The woman thereafter sold Lot 5 to an innocent purchaser for value.

The bank discovered that the instrument of release had been altered and brought an appropriate action against the woman and the purchaser to set aside the release as it applied to Lot 5. The woman did not defend against the action, but the purchaser did.

The recording act of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record."

The court should rule for

A: the purchaser, because the bank was negligent in failing to check the recordation of the release.
B: the purchaser, because she was entitled to rely on the recorded release.
C: the bank, because the purchaser could have discovered the alteration by reasonable inquiry.
D: the bank, because the alteration of the release was ineffective.

The explanation for the answer is:

D is correct. The recording act quoted in this question is a race-notice act. To prevail under a race-notice act, a party must be a bona fide purchaser ("BFP") who 1) was the first to record the deed (won the race), and 2) acquired the land without notice of earlier purchasers. Recording, however, is performed for the purpose of providing *notice*. It has no effect on the validity or invalidity of a deed. In this case, an invalid (forged) deed was recorded by the woman. The purchaser's lack of notice of the forgery and of any earlier purchasers is irrelevant to the validity of the deed. The invalid deed containing the forged release is ineffective, so answer D is correct.

Answers A and C are incorrect because the purchaser is only required to search the record, not to inspect each deed the record contains for forgery, or contact each previous grantor and grantee listed in the index to insure the recordings were legitimate. Answer B is incorrect because an invalid deed, even if recorded, cannot be relied upon.

Question 1125 - Real Property - Mortgages

The question was:

A business owner owned a hotel, subject to a mortgage securing a debt the owner owed to bank. The owner later acquired a nearby parking garage, financing a part of the purchase price by a loan from a private lender, secured by a mortgage on the parking garage. Two years thereafter, the owner defaulted on the loan owed to the bank, which caused the full amount of that loan to become immediately due and payable. The bank decided not to foreclose on the mortgage on the owner's hotel at that time, but instead brought an action, appropriate under the laws of the jurisdiction and authorized by the mortgage loan documents, for the full amount of the defaulted loan. The bank obtained and properly filed a judgment for that amount.

A statute of the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

There is no other applicable statute, except the statute providing for judicial foreclosure of mortgages, which places no restriction on deficiency judgments.

The bank later brought an appropriate action for judicial foreclosure of its first mortgage on the hotel and of its judgment lien on the parking garage. The private lender was joined as a party defendant, and appropriately counterclaimed for foreclosure of its mortgage on the parking garage, which was also in default. All procedures were properly followed and the confirmed foreclosure sales resulted as follows:

The bank purchased the hotel for $100,000 less than its mortgage balance.

The bank purchased the parking garage for an amount that is $200,000 in excess of the private lender's mortgage balance.

The $200,000 surplus arising from the bid paid by the bank for the parking garage should be paid

A: $100,000 to the bank and $100,000 to the owner.
B: $100,000 to the private lender and $100,000 to the owner.
C: $100,000 to the bank and $100,000 to the private lender.
D: $200,000 to the owner.

The explanation for the answer is:

Answer A is correct. This question is most easily answered by diagramming the amounts each party owes or is owed. After the judicial foreclosure sale of the hotel, the bank was still owed $100,000. After the foreclosure sale of the garage, the private lender was owed nothing, and had a surplus of $200,000. After both foreclosures were completed, the owner owed $100,000 to the bank, and owed nothing to the private lender. Because the private lender is owed nothing, it is not entitled to any of the surplus, and answers B and C can be eliminated. Answer D is incorrect because the bank, as a mortgagee, stands ahead of the owner in the line of priority and must receive all the money it is owed before the owner will be entitled to receive anything. Once the bank has been paid the remaining $100,000 it is owed, any surplus (which in this case is $100,000) will go to the owner. Therefore, answer A is correct, and answers B, C, and D are incorrect.

Question 1140 - Real Property - Titles

The question was:

A landowner owned Blackacre in fee simple and conveyed Blackacre to a teacher by warranty deed. An adjoining owner asserted title to Blackacre and brought an appropriate action against the teacher to quiet title to Blackacre. The teacher demanded that the landowner defend the teacher's title under the deed's covenant of warranty, but the landowner refused. The teacher then successfully defended at her own expense.

The teacher brought an appropriate action against the landowner to recover the teacher's expenses incurred in defending against the adjoining owner's action to quiet title to Blackacre.

In this action, the court should decide for

A: the teacher, because in effect it was the landowner's title that was challenged.
B: the teacher, because the landowner's deed to her included the covenant of warranty.
C: the landowner, because the title the landowner conveyed was not defective.
D: the landowner, because the adjoining owner may elect which of the landowner or the teacher to sue.

The explanation for the answer is:

C is correct. The covenant of warranty is a guarantee by the seller that the title being conveyed is marketable, and that the grantor will defend any valid claims against that title. A breach of the covenant of warranty is established when a third party interferes with possession of the land, not when a third party makes a claim against the grantee. Consequently, the grantor is not required to defend the grantee or his heirs in any action against title; rather, he must only defend against a wrongful claim or eviction. In this case, the facts do not indicate that any valid claim existed because the teacher prevailed over the adjoining owner in an action to quiet title. Because the landowner conveyed good title, and did not fail to defend against any valid claims that existed at the time of the conveyance, the landowner should prevail, and answer C is correct.

Answer B is incorrect because, although the landowner's deed to the teacher did include the covenant of warranty, the teacher would only be entitled to recover if the adjoining owner's claim was successful. Answers A and D are incorrect because the teacher was the only party who held title and thereby the only party the adjoining owner could have sued.

Question 1149 - Real Property - Ownership

The question was:

Three years ago a landowner conveyed Blackacre to his niece for $50,000 by a deed that provided: "By accepting this deed, [the niece] covenants for herself, her heirs and assigns, that the premises herein conveyed shall be used solely for residential purposes and, if the premises are used for nonresidential purposes, the landowner, his heirs and assigns, shall have the right to repurchase the premises for the sum of one thousand dollars ($1,000)." In order to pay the $50,000 purchase price for Blackacre, the niece obtained a $35,000 mortgage loan from the bank. The landowner had full knowledge of the mortgage transaction. The deed and mortgage were promptly and properly recorded in proper sequence. The mortgage, however, made no reference to the quoted language in the deed.

Two years ago the niece converted her use of Blackacre from residential to commercial without the knowledge or consent of the landowner or of the bank. The niece's commercial venture failed, and the niece defaulted on her mortgage payments to the bank. Blackacre now has a fair market value of $25,000.

The bank began appropriate foreclosure proceedings against the niece. The landowner properly intervened, tendered $1,000, and sought judgment that the niece and the bank be ordered to convey Blackacre to the landowner, free and clear of the mortgage.

The common law Rule Against Perpetuities is unmodified by statute.

If the court rules against the landowner, it will be because

A: the provision quoted from the deed violates the Rule Against Perpetuities.
B: the bank had no actual knowledge of, and did not consent to, the violation of the covenant.
C: the rights reserved by the landowner were subordinated, by necessary implication, to the rights of the bank as the lender of the purchase money.
D: the consideration of $1,000 was inadequate.

The explanation for the answer is:

A is correct. The quoted provision violates the Rule Against Perpetuities (RAP). The RAP applies to three types of interests: 1) vested remainders subject to open, 2) contingent remainders, and 3) executory interests. The Rule dictates that where any of these interests would vest outside of a life in being plus 21 years, it is void. Answering RAP questions is best accomplished in two parts: 1) identify the *type* of interests created by the language of the deed, and 2) if the interest is one of the three that the RAP applies to, determine whether it would be possible for that interest to vest any later than twenty-one years after *everyone* alive at the time of the conveyance has died. If it could, the interest is void.

In this case, the facts indicate that if the property ever ceases to be used from nonresidential purposes, the landowner and/or his heirs have a right to repurchase, thus a contingent remainder. However, it could be decades before the land is used for nonresidential purposes, meaning it could be decades before the landowner and his heirs' interests can become possessory. Because it may be longer than a life in being plus 21 years before that occurs, the language of the grant violates the RAP, and answer A is correct. Answer B, C and D are all incorrect as the RAP provides a sounder basis to rule against the landowner than any of the concepts or doctrines these answers reference.

Question 1162 - Real Property - Ownership

The question was:

A woman owned Blueacre, a tract of land, in fee simple. The woman wrote and executed, with the required formalities, a will that devised Blueacre to "my daughter for life with remainder to my descendants *per stirpes*." At the time of writing the will, the woman had a husband and no descendants living other than her two children, a daughter and a son.

The woman died and the will was duly admitted to probate. The woman's husband predeceased her. The woman was survived by her two children, four grandchildren, and one great-grandchild. The two children were the woman's sole heirs at law.

The two children brought an appropriate action for declaratory judgment as to title of Blueacre. Guardians *ad litem* were appointed and all other steps were taken so that the judgment would bind all persons interested whether born or unborn.

In that action, if the court rules that the daughter has a life estate in the whole of Blueacre and that the remainder is contingent, it will be because the court chose one of several possible constructions and that the chosen construction

A: related all vesting to the time of writing of the will.
B: related all vesting to the death of the woman.
C: implied a condition that remaindermen survive the daughter.
D: implied a gift of a life estate to the son.

The explanation for the answer is:

C is the correct answer. This is a reading comprehension question. The instruction is to find an answer that would correspond to a court finding of a contingent remainder. A remainder is contingent if there is a condition precedent that must be satisfied before the interest will vest. Choice C is the only answer that appropriately addresses the issue of a condition that must be satisfied.

A and B are incorrect. The writing of the will does not determine the time of vesting because the property could still be alienated before the woman's death. Likewise, the creation of an interest by will occurs at the death of the testator, but whether the interests are vested will be determined by the language of the will. Neither answer addresses the issue of conditional interest, which is the call of the question.

D is incorrect. Nothing in the facts support an inference of a life estate to the son. The issue is the contingency of the remainder, not an additional life estate.

Question 1168 - Real Property - Ownership

The question was:

Six years ago, the owner of Blackacre in fee simple executed and delivered to a widower an instrument in the proper form of a warranty deed, purporting to convey Blackacre to "[the widower] and his heirs." At that time, the widower had one child.

Three years ago, the widower executed and delivered to a buyer an instrument in the proper form of a warranty deed, purporting to convey Blackacre to "[the buyer]." The child did not join in the deed. The buyer was and still is unmarried and childless.

The only possibly applicable statute in the jurisdiction states that any deed will be construed to convey the grantor's entire estate, unless expressly limited.

Last month, the widower died, never having remarried. His child is his only heir.

Blackacre is now owned by

A: the child, because the widower's death ended the buyer's life estate *pur autre vie*.
B: the buyer in fee simple pursuant to the widower's deed.
C: the child and the buyer as tenants in common of equal shares.
D: the child and the buyer as joint tenants, because both survived the widower.

The explanation for the answer is:

B is correct. The owner conveyed Blackacre to the widower in fee simple. The language of the conveyance indicating that it was made to "[the widower] and his heirs" does *not* create an interest in the child. Because the widower holds the land in fee simple, his ownership will not be terminated by the happening of any subsequent condition, and he is free to transfer the land to whomever he wishes (there are no restraints on alienation). Because there are no restrictions on the widower's right to re-convey the land, his conveyance to the buyer in fee simple will be upheld, and the child has no rights in the property. Answers C and D may therefore be eliminated. Note that the widower could have given the child an interest if he wished to. For example, he could have conveyed the property "to [the buyer]for life, then to the child and her heirs." Alternatively, if the widower had not conveyed to the buyer, the child would have simply inherited the property upon his death. The widower, however, held Blackacre in fee simple and was free to convey it as he wished, so answer B is correct. Answer A is incorrect because there is nothing in the facts indicating that the buyer had a life estate.

Question 1172 - Real Property - Mortgages

The question was:

The owner in fee simple of Orchardacres, mortgaged Orchardacres to a lender to secure the payment of a loan she made to him. The loan was due at the end of the growing season of the year in which it was made. The owner maintained and operated an orchard on the land, which was his sole source of income. Halfway through the growing season, the owner experienced severe health and personal problems and, as a result, left the state; his whereabouts were unknown. The lender learned that no one was responsible for the cultivation and care of the orchard on Orchardacres. The lender undertook to provide, through employees, the care of the orchard and the harvest for the remainder of the growing season. The net profits were applied to the debt secured by the mortgage on Orchardacres.

During the course of the harvest, a business invitee was injured by reason of a fault in the equipment used. Under applicable tort case law, the owner of the premises would be liable for the business invitee's injuries. The business invitee brought an appropriate action against the lender to recover damages for the injuries suffered, relying on this aspect of tort law.

In such lawsuit, judgment should be for

A: the lender, because the state is not a title theory state, so a mortgagee has no title interest but only a lien.
B: the business invitee, because the lender was a mortgagee in possession.
C: the lender, because she acted as agent of the owner only to preserve her security interest.
D: the business invitee, because the mortgage did not expressly provided for her taking possession in the event of danger to her security interest.

The explanation for the answer is:

B is the correct answer. The lender was the mortgagee of Orchardacres. A mortgage conveys an interest in land as security for an obligation that the owner of that land owes to the creditor (the lender). The lender has certain rights prior to an action for default against the owner for non-payment of his mortgage. The lender was aware that the owner had abandoned Orchardacres. As the mortgagee, the lender had the right to enter Orchardacres to correct a situation that would have created waste of the property via the loss of income from the abandoned crops. When she utilized her interest in Orchardacres by entering the property and running it, the lender took possession of the property subject to her interest in it as mortgagee. As such, she was in the position of an owner, not an agent, so the business invitee will prevail in his action.

C is incorrect because the lender was not an agent of the owner. A and D are incorrect. When an exam choice presents a "but only because" answer, it is too narrow and is most likely wrong. Whether the state is a title or lien theory state will not affect the lender's ability to step in to prevent waste or to enjoin the owner from causing waste. The primary effect of the different theories is their effect on a joint tenancy. A unilateral mortgage in a title theory state will sever a joint tenancy, while in a lien theory state the mortgage is not considered an alienation of interest and will not sever the tenancy, resulting in a tenancy in common. Likewise, the right to prevent waste is inferred from the mortgage and is not required to be an express term. It is implicit in the existence of the lender's interest in the property.

Question 1177 - Real Property - Contract

The question was:

A landlord owned Blackacre. The landlord entered into a written three-year lease of Blackacre with a tenant. Among other provisions, the lease prohibited the tenant from "assigning this lease, in whole or in part, and from subletting Blackacre, in whole or in part." In addition to a house, a barn, and a one-car garage, Blackacre's 30 acres included several fields where first the landlord, and now the tenant, grazed sheep.

During the following months, the tenant, by a written agreement, allowed one neighbor exclusive use of the garage for two years, charging him $240. The tenant subsequently handed over the keys to the garage.

The tenant also told a different neighbor that the neighbor could use the fields to practice golf as long as she did not disturb the tenant's sheep.

Which, if any, of the tenant's actions constituted a violation of the lease?

A: Granting the neighbor exclusive use of the garage.
B: Allowing the neighbor to practice golf on the land.
C: Allowing the neighbor to practice golf on the land and granting the other neighbor exclusive use to the garage and the car.
D: The tenant did not violate the lease.

The explanation for the answer is:

A is correct. This question requires you to determine whether various actions by a tenant amounted to: 1) an assignment, 2) a sublease, or 3) neither of these. An assignment of a lease by a tenant occurs where the tenant transfers all its rights and duties under a lease to another party (an "assignee") for the *entire* length of time remaining on the lease. By contrast, a sublease is a transfer by a tenant to another party (a "sublessee") for a time period *shorter* than the time remaining on the lease. The facts indicate that the tenant allowed one of her neighbors to practice her golf game on part of the land. The tenant has not given up any of her rights to the land or relieved any of her duties related to it through this action; the golf playing neighbor is simply an invited guest. Since the tenant's lease does not prohibit her from having guests on the land, answers B and C may be eliminated.

The tenant has, however, violated the lease through her actions with regard to the neighbor who is using the garage. She has given him *exclusive* use of the garage for a period of 2 years. This exclusive use constitutes a transfer of all the tenant's rights to the garage, as the neighbor may exclude even her. Because the facts do not indicate the exact month in which the exclusive use agreement was entered, it is impossible to determine whether it is an assignment or a sublease that was created. The tenant has a three year lease - therefore, if she entered the two year agreement with the neighbor one year into her own lease, she has transferred her rights for the entire remaining length of that lease and created an assignment. If, however, she entered the agreement during months one through eleven of her lease, the transfer will terminate before her lease does, and she has created a sublease. Because assignments and subleases are both prohibited by the tenant's lease, her parking agreement with the neighbor constitutes a violation. Therefore, answer A is correct, and answers B, C, and D are incorrect.

Question 1209 - Real Property - Titles

The question was:

A landowner executed an instrument in the proper form of a deed, purporting to convey his land to a friend. The landowner handed the instrument to the friend, saying, "This is yours, but please do not record it until after I am dead. Otherwise, it will cause me no end of trouble with my relatives." Two days later, the landowner asked the friend to return the deed to him because he had decided that he should devise the land to the friend by will rather than by deed. The friend said that he would destroy the deed and a day or so later falsely told the landowner that the deed had been destroyed. Six months later, the landowner, who had never executed a will, died intestate, survived by a daughter as his sole heir at law. The day after the landowner's death, the friend recorded the deed from him. As soon as the daughter discovered this recording and the friend's claim to the land, she brought an appropriate action against the friend to quiet title to the land.

For whom should the court hold?

A: The daughter, because the death of the landowner deprived the subsequent recordation of any effect.
B: The daughter, because the friend was dishonest in reporting that he had destroyed the deed.
C: The friend, because the deed was delivered to him.
D: The friend, because the deed was recorded by him.

The explanation for the answer is:

Answer C is correct. A deed must be delivered to be valid. Delivery is a question of intent. The words of the landowner included "this is yours," showing the necessary intent to strip himself of dominion and control over the deed and to immediately transfer the title. In addition, handing the deed to the grantee raises a rebuttable presumption of delivery. Recording the deed is not required and thus the request not to record the document until later is irrelevant so long as delivery was present.

Answer A is incorrect. The deed to the friend was valid because it was in the proper form and was delivered to him. Delivery occurred at the time the landowner handed the deed to the friend. At that time the landowner was competent. The friend's subsequent recording of the deed had no effect on the deed's validity.

Answer B is incorrect. The deed to the friend was valid because it was in the proper form and was delivered to him. Delivery occurred at the time the deed was handed to the friend with the words "this is yours." The subsequent misrepresentation that the friend made that he had destroyed the deed has no effect on the prior valid delivery.

Answer D is incorrect. Recording a document has no effect on its validity. In this case, the deed to the friend was valid because it was in the proper form and was delivered to him. His subsequent recording of the deed had no effect on his claim of ownership, although recording will now provide constructive notice of his ownership.

Question 1215 - Real Property - Ownership

The question was:

A landowner conveyed his land by quitclaim deed to his daughter and son "as joint tenants in fee simple." The language of the deed was sufficient to create a common-law joint tenancy, which is unmodified by statute. The daughter then duly executed a will devising her interest in the land to a friend. Then the son duly executed a will devising his interest in the land to a cousin. The son died; then the daughter died. Neither had ever married. The daughter's friend and the cousin survived.

After both wills have been duly probated, who owns what interest in the land?

A: The cousin owns the land in fee simple.
B: The daughter's friend and the cousin own equal shares as joint tenants.
C: The daughter's friend and the cousin own equal shares as tenants in common.
D: The daughter's friend owns the land in fee simple.

The explanation for the answer is:

Answer D is correct. A joint tenancy is not devisable or inheritable, and cannot be severed by a will. In this case, the son and the daughter received title as joint tenants with right of survivorship. On the death of the son, the interest of the daughter swelled and she then owned the land alone and in fee simple. She had the right to devise that interest by her will to the friend.

Answer A is incorrect because the son had no separate interest in the land to convey by will to the cousin. A joint tenancy is not devisable or inheritable, and cannot be severed by a will. In this case, therefore, the son's interest in the land terminated on his death.

Answer B is incorrect. Joint tenants traditionally received their interests at the same time and by the same document. The friend and the cousin received their purported interests by two different documents. Even if formal requirements are not required to create the joint tenancy, there is no intent to create a joint tenancy between the friend and the cousin. In fact, because a joint tenancy is not devisable or inheritable, and cannot be severed by a will, the son's interest terminated on his death, and he had no interest to convey to the cousin.

Answer C is incorrect. It is true that a tenancy in common may be created by different documents. However, the son's interest in this case was a joint tenancy with the daughter. Because a joint tenancy is not devisable or inheritable, and cannot be severed by a will, the son's interest terminated on his death and he had no interest to convey to the cousin.

Question 1218 - Real Property - Titles

The question was:

A grantor executed an instrument in the proper form of a warranty deed purporting to convey a tract of land to his church. The granting clause of the instrument ran to the church "and its successors forever, so long as the premises are used for church purposes." The church took possession of the land and used it as its site of worship for many years. Subsequently, the church wanted to relocate and entered into a valid written contract to sell the land to a buyer for a substantial price. The buyer wanted to use the land as a site for business activities and objected to the church's title. The contract contained no provision relating to the quality of title the church was bound to convey. There is no applicable statute. When the buyer refused to close, the church sued the buyer for specific performance and properly joined the grantor as a party.

Is the church likely to prevail?

A: No, because the grantor's interest prevents the church's title from being marketable.
B: No, because the quoted provision is a valid restrictive covenant.
C: Yes, because a charitable trust to support religion will attach to the proceeds of the sale.
D: Yes, because the grantor cannot derogate from his warranty to the church.

The explanation for the answer is:

Answer A is correct. The warranty deed conveyed a fee simple determinable title to the church and the grantor retained the future interest which is the possibility of reverter. The future interest becomes possessory immediately upon the occurrence of the limitation. A title is unmarketable when a reasonable person would not purchase it. The buyer plans to use the land as a site for business purposes, which would cause the limitation to occur and the title to be forfeited automatically to the grantor.

Answer B is incorrect. This answer correctly states that the church is unlikely to prevail, but it misstates the legal basis for the conclusion. The quoted provision creates a fee simple determinable title in the church. If the stated limitation occurs, the fee simple estate terminates automatically and title is forfeited to the holder of the future interest (in this case, the grantor). A restrictive covenant involves a promise regarding the use of the land and is not the title itself. Because the title in this case will be forfeited to the grantor if the land is not used for church purposes, no reasonable third party is likely to buy the land, and the church's title is not marketable.

Answer C is incorrect. When and if the limitation occurs, the interest of the present interest holder is automatically terminated and title goes to the grantor as the holder of the future interest. While it is true that the church may use the sale proceeds as it desires, it is unlikely to find a buyer because any change in use of the land would cause the title to be forfeited automatically to the grantor. Accordingly, the church's title is not marketable.

Answer D is incorrect. The grantor conveyed a title, which was a fee simple determinable, to the church and retained the possibility of reverter in fee simple. The grantor did not breach any title warranty. If the property is not used for church purposes, the property automatically is forfeited to the holder of the future interest, who is the grantor. Accordingly, the church's title is not marketable.

Question 1223 - Real Property - Ownership

The question was:

A landowner died, validly devising his land to his wife "for life or until remarriage, then to" their daughter. Shortly after the landowner's death, his daughter executed an instrument in the proper form of a deed, purporting to convey the land to her friend. A year later, the daughter died intestate, with her mother, the original landowner's wife, as her sole heir. The following month, the wife re-married. She then executed an instrument in the proper form of a deed, purporting to convey the land to her new husband as a wedding gift.

Who now owns what interest in the land?

A: The daughter's friend owns the fee simple.
B: The wife owns the fee simple.
C: The wife's new husband has a life estate in the land for the wife's life, with the remainder in the daughter's friend.
D: The wife's new husband owns the fee simple.

The explanation for the answer is:

Answer A is correct. The landowner's wife had a determinable life estate, evidenced by the words "for life" and "until remarriage" in the landowner's will. The daughter had a vested remainder and an executory interest. Both of the daughter's interests could be assigned to the friend. On the remarriage of the landowner's wife, the wife's life estate ended and it automatically went to the holder of the future interest, who was then the daughter's friend. The landowner's wife had no interest in the land to give to her new husband at the time she executed the deed. Answer D is incorrect.

Answer B is incorrect. The landowner's wife had a determinable life estate, evidenced by the words "for life" and "until remarriage." A fee simple estate has no such words of special limitation. On the remarriage of the landowner's wife, the wife's life estate ended and it automatically went to the holder of the future interest.

Answer C is incorrect. The landowner's wife had a determinable life estate, evidenced by the words "for life" and "until remarriage." Had she not remarried, the wife's life estate would have been transferable; however, the words of limitation regarding remarriage terminated the wife's life estate immediately upon her remarriage, and her estate automatically went to the holder of the future interest.

Question 1239 - Real Property - Contract

The question was:

A creditor received a valid judgment against a debtor and promptly and properly filed the judgment in the county. Two years later, the debtor purchased land in the county and promptly and properly recorded the warranty deed to it. Subsequently, the debtor borrowed $30,000 from his aunt, signing a promissory note for that amount, which note was secured by a mortgage on the land. The mortgage was promptly and properly recorded. The aunt failed to make a title search before making the loan. The debtor made no payment to the creditor and defaulted on the mortgage loan from his aunt. A valid judicial foreclosure proceeding was held, in which the creditor, the aunt, and the debtor were named parties. A dispute arose as to which lien has priority. A statute of the jurisdiction provides: "Any judgment properly filed shall, for 10 years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." A second statute of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record."

Who has the prior lien?

A: The aunt, because a judgment lien is subordinate to a mortgage lien.
B: The aunt, because she is a mortgagee under a purchase money mortgage.
C: The creditor, because its judgment was filed first.
D: The creditor, because the aunt had a duty to make a title search of the property.

The explanation for the answer is:

Answer C is correct. This is a race-notice jurisdiction which protects a bona fide purchaser for value without notice who records first. The creditor filed first, giving the aunt constructive notice of the judgment lien. Accordingly, the judgment lien has priority.

Answer A is incorrect. A mortgage lien does not automatically have priority over a judgment lien. This is a race-notice jurisdiction which protects a bona fide purchaser for value without notice who records first. The aunt had constructive notice of the judgment lien, which was filed before the aunt loaned money to the debtor and obtained the mortgage. Accordingly, the judgment lien has priority.

Answer B is incorrect. The aunt is not a mortgagee under a purchase money mortgage, because the debtor already owned the property when he borrowed money from the aunt, signed the note, and signed the mortgage. Furthermore, a mortgage lien does not have automatic priority over a judgment lien. This is a race-notice jurisdiction which protects a bona fide purchaser for value without notice who records first. The aunt had constructive notice of the judgment lien, which was filed before the aunt loaned money to the debtor and obtained the mortgage. Accordingly, the judgment lien has priority.

Answer D is incorrect. Although this option correctly concludes that the creditor has priority, it misstates the reason why this is so. No one has a duty to make a title search. The creditor has priority because the judgment lien was filed first in a race notice jurisdiction.

Question 1245 - Real Property - Mortgages

The question was:

An investor purchased a tract of land, financing a large part of the purchase price by a loan from a business partner that was secured by a mortgage. The investor made the installment payments on the mortgage regularly for several years. Then the investor persuaded a neighbor to buy the land, subject to the mortgage to his partner. They expressly agreed that the neighbor would not assume and agree to pay the investor's debt to the partner. The investor's mortgage to the partner contained a due-on-sale clause stating, "If Mortgagor transfers his/her interest without the written consent of Mortgagee first obtained, then at Mortgagee's option the entire principal balance of the debt secured by this Mortgage shall become immediately due and payable." However, without seeking his partner's consent, the investor conveyed the land to the neighbor, the deed stating in pertinent part " . . . , subject to a mortgage to [the partner]," and giving details and recording data related to the mortgage. The neighbor took possession of the land and made several mortgage payments, which the partner accepted. Now, however, neither the neighbor nor the investor has made the last three mortgage payments. The partner has sued the neighbor for the amount of the delinquent payments.

In this action, for whom should the court render judgment?

A: The neighbor, because she did not assume and agree to pay the investor's mortgage debt.
B: The neighbor, because she is not in privity of estate with the partner.
C: The partner, because the investor's deed to the neighbor violated the due-on-sale clause.
D: The partner, because the neighbor is in privity of estate with the partner.

The explanation for the answer is:

Answer A is correct. A grantee who does not assume the mortgage, but rather takes subject to the mortgage, is not personally liable for the debt. In this case, there was no express assumption. In fact, the parties agreed that the neighbor was not assuming the mortgage debt. The land is primarily liable and the investor is a surety for the debt.

Answer B is incorrect. Although this option correctly concludes that the neighbor will prevail, it misstates the reason why she is not liable for the delinquent mortgage payments. Privity of estate arises when the parties share a relationship with the land (e.g., a landlord and a tenant), which is not present in these facts. The investor conveyed the land to the neighbor. The only possible privity might be instantaneous privity between the neighbor and the investor, which could provide horizontal privity in the area of the running of real covenants. However, real covenants are not at issue. The lack of privity between the neighbor and the partner has no effect on the mortgage debt. The neighbor is not liable on that debt because she did not assume it. The investor is the only party liable for the mortgage to the partner.

Answer C is incorrect. A due-on-sale clause is used to accelerate the debt in the event of a transfer of the property to a third party. Here, the partner is suing only for delinquent payments. Moreover, the neighbor is not liable on the mortgage debt because she did not assume it. The investor is the only party liable for the mortgage to the partner.

Answer D is incorrect. Privity of estate arises when the parties share a relationship with the land (e.g., a landlord and a tenant), which is not present in these facts. The investor conveyed the land to the neighbor. The only possible privity might be instantaneous privity between the neighbor and the investor, which could provide horizontal privity in the area of the running of real covenants. However, real covenants are not at issue, and in any event, the neighbor is not in privity with the partner. The neighbor is not liable on the mortgage debt because she did not assume it. The investor is the only party liable for the mortgage to the partner.

Question 1252 - Real Property - Rights in Land

The question was:

A rancher and a farmer own adjacent tracts of rural land. For the past nine years, the rancher has impounded on her land the water that resulted from rain and melting snow, much of which flowed from the farmer's land. The rancher uses the water in her livestock operation. Recently, the farmer increased the size of his farming operation and built a dam on his land near the boundary between the two tracts. Because of the dam, these waters no longer drain from the farmer's land onto the rancher's land. There is no applicable statute. The rancher sued the farmer to restrain him from interfering with the natural flow of the water onto her land.

Who is likely to prevail?

A: The farmer, because he has the right to use all of the water impounded on his land.
B: The farmer, because the rancher's past impoundment of water estops her from asserting the illegality of the farmer's dam.
C: The rancher, because she has acquired riparian rights to use the water.
D: The rancher, because the farmer is estopped to claim all of the surface water on his land.

The explanation for the answer is:

Answer A is correct. This water is diffuse surface water. Although there are different views regarding the way an owner may expel such water, an owner such as the farmer may impound such water, especially in the absence of any malice.

Answer B is incorrect. Although this option correctly concludes that the farmer will prevail, it misstates the reason why this is so. Especially in the absence of malice, either landowner may impound diffuse surface waters. Neither impoundment is illegal, and the doctrine of estoppel does not apply.

Answer C is incorrect. Waters from melting snows and rain are diffuse surface waters. Riparian waters are waters with defined beds and banks, such as streams, rivers, and lakes. A riparian owner is one whose land borders such waters. Here, the only water at issue is diffuse surface water. Although there are different views regarding the way an owner may expel such water, an owner such as the farmer clearly may impound such water, especially in the absence of any malice.

Answer D is incorrect. Especially in the absence of malice, either landowner may impound diffuse surface water. Neither impoundment is illegal in itself, and the farmer's impoundment did not run counter to any past representation relied upon by the rancher. In these circumstances, the doctrine of estoppel does not apply, and the farmer will prevail.

Question 1257 - Real Property - Mortgages

The question was:

A businessman owned a hotel, subject to a mortgage securing a debt he owed to a bank. The businessman later acquired a nearby parking garage, financing a part of the purchase price by a loan from a financing company, secured by a mortgage on the parking garage. Two years thereafter, the businessman defaulted on the loan owed to the bank, which caused the full amount of that loan to become immediately due and payable. The bank decided not to foreclose the mortgage on the hotel at that time, but instead properly sued for the full amount of the defaulted loan. The bank obtained and properly filed a judgment for that amount. A statute of the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." There is no other applicable statute, except the statute providing for judicial foreclosure of mortgages, which places no restriction on deficiency judgments. Shortly thereafter, the bank brought an appropriate action for judicial foreclosure of its first mortgage on the hotel and of its judgment lien on the parking garage. The financing company was joined as a party defendant, and appropriately counterclaimed for foreclosure of its mortgage on the parking garage, which was also in default. All procedures were properly followed and the confirmed foreclosure sales resulted in the following: The net proceeds of the sale of the hotel to a third party were $200,000 less than the bank's mortgage balance. The net proceeds of the sale of the parking garage to a fourth party were $200,000 more than the financing company's mortgage balance.

How should the $200,000 surplus arising from the bid on the parking garage be distributed?

A: It should be paid to the bank.
B: It should be paid to the businessman.
C: It should be paid to the financing company.
D: It should be split equally between the bank and the financing company.

The explanation for the answer is:

Answer A is correct. The foreclosure sale of the bank's mortgage on the hotel was insufficient to pay the businessman's debt to the bank. The bank had received a judgment against the businessman for the entire amount of the defaulted loan. This lien was properly recorded and applied to all property owned by the businessman during the ten-year time period, including the parking garage. (The bank may have decided on this course of action because it deemed the businessman's equity in the garage was significant and the timing was bad for a hotel foreclosure.) After the financing company was paid in full from the funds generated by the foreclosure sale of its mortgage on the parking garage, the additional funds generated by that sale would be paid to the bank not as a deficiency judgment, but because of the unsatisfied amount of the prior money judgment.

Answer B is incorrect. The judgment lien was properly filed against the businessman. Therefore, the garage was subject not only to the loan of the financing company, but also to the judgment lien as a second priority. The businessman would be entitled to surplus proceeds only if both liens had been fully paid.

Answers C and D are incorrect for the same reason. The foreclosure sale of the financing company's mortgage on the parking garage was sufficient to pay the businessman's debt to the financing company in full. The fact that the garage was sold for more money than was owed under the garage mortgage is irrelevant to the amount owed to the financing company. Because the bank's judgment lien was properly filed against the businessman, the lien had second priority once the financing company's loan was paid in full, and the surplus proceeds will be paid to the bank.

Question 1266 - Real Property - Contract

The question was:

A seller entered into a written contract to sell a tract of land to an investor. The contract made no mention of the quality of title to be conveyed. Thereafter, the seller and the investor completed the sale, and the seller delivered a warranty deed to the investor. Soon thereafter, the value of the land increased dramatically. The investor entered into a written contract to sell the land to a buyer. The contract between the investor and the buyer expressly provided that the investor would convey a marketable title. The buyer's attorney discovered that the title to the land was not marketable, and had not been marketable when the original seller conveyed to the investor. The buyer refused to complete the sale. The investor sued the original seller on multiple counts. One count was for breach of the contract between the seller and the investor for damages resulting from the seller's failure to convey to the investor marketable title, resulting in the loss of the sale of the land to the subsequent buyer.

Who is likely to prevail on this count?

A: The investor, because the law implies in the contract a covenant that the title would be marketable.
B: The investor, because the original seller is liable for all reasonably foreseeable damages.
C: The original seller, because her contract obligations as to title merged into the deed.
D: The original seller, because she did not expressly agree to convey marketable title.

The explanation for the answer is:

Answer C is correct. Although a marketable title will be implied in a contract for the sale of land, the doctrine of merger provides that one can no longer sue on title matters contained in the contract of sale after the deed is delivered and accepted. The investor's remedy, if there is one, would be based on the deed he received and not on the contract of sale.

Answer A is incorrect. Although a covenant that title will be marketable is implied in a contract for the sale of land, the doctrine of merger provides that one can no longer sue on title matters contained in the contract of sale after the deed is delivered and accepted. In this case, if the investor has a remedy, it would be based on the deed he received, not on the contract of sale. The seller will prevail on the breach of contract claim.

Answer B is incorrect. The doctrine of merger provides that one can no longer sue on title matters contained in the contract of sale after the deed is delivered and accepted. The investor's remedy, if there is one, would be based on the deed he received, not on the contract of sale. The facts do not justify any other claim for damages (e.g., misrepresentation). Accordingly, the seller will prevail on the breach of contract claim.

Answer D is incorrect. This option correctly concludes that the seller will prevail, but misstates the reason why this is so. Even if the contract of sale is silent regarding title matters, the law will imply a requirement of a marketable title in a contract for the sale of land. Therefore, the language of the contract of sale in this case is not dispositive. Instead, the seller will prevail because the doctrine of merger provides that one can no longer sue on title matters contained in the contract of sale after the deed is delivered and accepted. In this case, if the investor has a remedy, it would be based on the deed he received, not on the contract of sale.

Question 1270 - Real Property - Titles

The question was:

When a homeowner became ill, he properly executed a deed sufficient to convey his home to his nephew, who was then serving overseas in the military. Two persons signed as witnesses to qualify the deed for recordation under an applicable statute. The homeowner handed the deed to his nephew's friend and said, "I want [the nephew] to have my home. Please take this deed for him." Shortly thereafter, the nephew's friend learned that the homeowner's death was imminent. One day before the homeowner's death, the nephew's friend recorded the deed. The nephew returned home shortly after the homeowner's death. The nephew's friend brought him up to date, and he took possession of the home. The homeowner died intestate, leaving a daughter as his sole heir. She asserted ownership of his home. The nephew brought an appropriate action against her to determine title to the home. The law of the jurisdiction requires only two witnesses for a will to be properly executed.

If the court rules for the nephew and against the daughter, what is the most likely explanation?

A: The deed was delivered when the homeowner handed it to the nephew's friend.
B: The delivery of the deed was accomplished by the recording of the deed.
C: The homeowner's death consummated a valid gift causa mortis to the nephew.
D: The homeowner's properly executed deed was effective as a testamentary document.

The explanation for the answer is:

Answer A is correct. A gift may be made of real estate. A deed is required as are the elements for a gift. The homeowner had the requisite donative intent as shown by his words. Delivery occurred when the homeowner physically handed the deed to the nephew's friend as the agent of the nephew. Acceptance is presumed if the gift is beneficial. At this point, the homeowner could not recall the gift.

Answer B is incorrect. Although the recording of a deed may raise the presumption of delivery, here the delivery occurred prior to the recordation of the deed. Delivery occurred when the homeowner physically handed the deed to the nephew's friend as the agent of the nephew, with the intent to pass the title.

Answer C is incorrect. A gift causa mortis may only be made of personal property. In addition, the gift was not made in view of pending death from a stated peril. The facts only note that the homeowner was ill. This was a valid inter vivos gift of real property which was irrevocable on delivery of the deed to the nephew's friend.

Answer D is incorrect. A testamentary document takes effect at the death of the testator and must have been executed with the requisite testamentary intent. The homeowner wanted the nephew to have title immediately and thus delivered the deed to the nephew's friend. The homeowner did not want to postpone delivery until his death. This was a valid inter vivos gift of real property which was irrevocable on delivery of the deed to the nephew's friend.

Question 1282 - Real Property - Titles

The question was:

An uncle was the record title holder of a vacant tract of land. He often told friends that he would leave the land to his nephew in his will. The nephew knew of these conversations. Prior to the uncle's death, the nephew conveyed the land by warranty deed to a woman for $10,000. She did not conduct a title search of the land before she accepted the deed from the nephew. She promptly and properly recorded her deed. Last month, the uncle died, leaving the land to the nephew in his duly probated will. Both the nephew and the woman now claim ownership of the land. The nephew has offered to return the $10,000 to the woman.

Who has title to the land?

A: The nephew, because at the time of the deed to the woman, the uncle was the owner of record.
B: The nephew, because the woman did not conduct a title search.
C: The woman, because of the doctrine of estoppel by deed.
D: The woman, because she recorded her deed prior to the uncle's death.

The explanation for the answer is:

Answer C is correct. The woman has title to the deed. Estoppel by deed applies to validate a deed, and in particular a warranty deed, that was executed and delivered by a grantor who had no title to the land at that time, but who represented that he or she had such title and who thereafter acquired such title. In this case, estoppel by deed would apply in the woman's favor to estop the nephew from claiming ownership of the land upon the death of his uncle.

Answer A is incorrect. The fact that the uncle was the owner of record on the date of transfer to the woman would be relevant in a dispute between the uncle and the woman, but is not relevant in a dispute between the nephew and the woman. In fact, the woman owns the land because the nephew will be estopped from claiming ownership of the land upon the death of his uncle.

Answer B is incorrect. The woman does not have a duty to conduct a title search, although she would be charged with the notice that such a search would provide. In this case, a title search would have revealed that the uncle was the owner of record on the date of transfer, but the uncle's ownership is only relevant to a dispute between the woman and the uncle. It is not relevant in a dispute between the nephew and the woman. In fact, the woman owns the land because the nephew will be estopped from claiming ownership of the land upon the death of his uncle.

Answer D is incorrect. This option correctly states that the woman owns the land, but misstates the reason why this is so. The woman's recording of the deed provided notice of her interest from the time of recording, but had no bearing on the validity of her claim. In this situation, estoppel by deed would apply in the woman's favor to estop the nephew from claiming ownership of the land upon the death of his uncle.

Question 1290 - Real Property - Rights in Land

The question was:

On a parcel of land immediately adjacent to a woman's 50-acre farm, a public school district built a large consolidated high school that included a 5,000-seat lighted athletic stadium. The woman had objected to the district's plans for the stadium and was particularly upset about nighttime athletic events that attracted large crowds and that, at times, resulted in significant noise and light intensity levels. On nights of athletic events, the woman and her family members wore earplugs and could not sleep or enjoy a quiet evening until after 10 p.m. In addition, light from the stadium on those nights was bright enough to allow reading a newspaper in the woman's yard.

Which of the following doctrines would best support the woman's claim for damages?

A: Constructive eviction.
B: Private nuisance.
C: Public nuisance.
D: Waste.

The explanation for the answer is:

Answer B is correct. Damages may be awarded if a private nuisance is proven. A private nuisance is a substantial and unreasonable non-trespassory interference with the use or enjoyment of one's land. The facts demonstrate a non-trespassory invasion of the woman's property rights, i.e., the bright lights and noise have disturbed the woman's use and enjoyment of her land. Thus, a claim for private nuisance would be the best doctrine to follow to support the woman's claim for damages.

Answer A is incorrect. A constructive eviction claim is raised in the context of a landlord and tenant relationship. It is inapplicable here, where the woman and the public school district own adjacent properties. However, as explained above, the facts demonstrate a non-trespassory invasion of the woman's property rights that would support a damages award for private nuisance.

Answer C is incorrect. A public nuisance is a violation of a legal right that is common to the public as a group. The activities at the school, although a public school, are disturbing only one landowner. As such, the facts in this case demonstrate a non-trespassory invasion of the woman's property rights that would support a damages award for private nuisance.

Answer B is incorrect. Damages for waste arise where ownership of a particular property is divided in time (e.g., a life estate) or is shared (e.g., a joint tenancy), and where one owner's use of the land impacts another owner's interest. In this case, the issue is between owners of adjacent properties, so waste is inapplicable. The facts here demonstrate a non-trespassory invasion of the woman's property rights that would support a damages award for private nuisance.

Question 1298 - Real Property - Rights in Land

The question was:

A landowner orally gave his neighbor permission to share the use of the private road on the landowner's land so that the neighbor could have more convenient access to the neighbor's land. Only the landowner maintained the road. After the neighbor had used the road on a daily basis for three years, the landowner conveyed his land to a grantee, who immediately notified the neighbor that the neighbor was not to use the road. The neighbor sued the grantee seeking a declaration that the neighbor had a right to continue to use the road.

Who is likely to prevail?

A: The grantee, because an oral license is invalid.
B: The grantee, because the neighbor had a license that the grantee could terminate at any time.
C: The neighbor, because the grantee is estopped to terminate the neighbor's use of the road.
D: The neighbor, because the neighbor's use of the road was open and notorious when the grantee purchased the land.

The explanation for the answer is:

Answer B is correct. A license is permission to use the land of another. It is revocable, and is not subject to the statute of frauds. In this case, because the neighbor had the landowner's permission to use the road and did not expend any money, property, or labor pursuant to the agreement, the neighbor had a license that was effectively revoked by the grantee.

Answer A is incorrect. This option correctly states that the grantee will prevail, but it misstates the reason why this is so. A license is not subject to the statute of frauds; it may be oral, written, or implied. In this case, the neighbor had a valid license, but it was effectively revoked by the grantee.

Answer C is incorrect. For estoppel to apply, the neighbor must have expended money, property, or labor pursuant to the agreement. In this case, the landowner alone maintained the road. The neighbor's use of the land by permission, without expense, was a license that was effectively revoked by the grantee.

Answer D is incorrect. An open and notorious use of the road suggests a claim for an easement by prescription. However, the use was with permission, which prevents a prescriptive claim, and the use was for a very short time, which negates any possible claim based on the discredited theory of lost grant. Instead, the neighbor's use of the land was a license that was effectively revoked by the grantee.

Question 1307 - Real Property - Titles

The question was:

Thirty years ago, a landowner conveyed land by warranty deed to a church (a charity) "so long as the land herein conveyed is used as the site for the principal religious edifice maintained by said church."

Twenty years ago, the landowner died intestate, survived by a single heir.

One year ago, the church dissolved and its church building situated on the land was demolished.

There is no applicable statute. The common law Rule Against Perpetuities is unmodified in the jurisdiction.

In an appropriate action, the landowner's heir and the attorney general, who is the appropriate official to assert public interests in charitable trusts, contest the right to the land.

In such action, who will prevail?

A: The landowner's heir, as successor to the landowner's possibility of reverter.
B: The landowner's heir, because a charity cannot convey assets donated to it.
C: The attorney general, because *cy pres* should be applied to devote the land to religious purposes to carry out the charitable intent of the landowner.
D: The attorney general, because the landowner's attempt to restrict the church's fee simple violated the Rule Against Perpetuities.

The explanation for the answer is:

Answer A is correct. The conveyance to the church created a fee simple determinable. The future interest retained by the grantor is a possibility of reverter. The church's right to possession ended automatically when the church stopped using the land as the site for its principal religious edifice. The heir inherited the possibility of reverter retained by the landowner and is entitled to possession. The Rule Against Perpetuities does not apply to a grantor's interests, such as a possibility of reverter.

Answer B is incorrect. Although this option correctly concludes that the landowner's heir will prevail, it misstates the rationale. The church's right to possession ended automatically when the church stopped using the land as the site for its principal religious edifice. The church did not attempt to convey any assets. The church received a fee simple determinable which ended, and the heir inherited the possibility of reverter retained by the landowner and is entitled to possession.

Answer C is incorrect. The church received a fee simple determinable and the grantor retained a right of reverter, which was inherited by the heir. The church's right to possession ended automatically when the church stopped using the land as the site for its principal religious edifice. The doctrine of cy pres may be used when there is a general charitable intent but not when the terms of the conveyance state a limitation that must be complied with for the charity to avoid automatic termination of its possessory interest in the property.

Answer D is incorrect. The landowner conveyed a fee simple determinable to the church. The landowner retained a future interest known as a possibility of reverter, which was inherited by the heir. A possibility of reverter is not subject to the Rule Against Perpetuities.

Question 1316 - Real Property - Mortgages

The question was:

A man borrowed money from a bank and executed a promissory note for the amount secured by a mortgage on his residence. Several years later, the man sold his residence. As provided by the contract of sale, the deed to the buyer provided that the buyer agreed "to assume the existing mortgage debt" on the residence.

Subsequently, the buyer defaulted on the mortgage loan to the bank, and appropriate foreclosure proceedings were initiated. The foreclosure sale resulted in a deficiency.

There is no applicable statute.

Is the buyer liable for the deficiency?

A: No, because even if the buyer assumed the mortgage, the seller is solely responsible for any deficiency.
B: No, because the buyer did not sign a promissory note to the bank and therefore has no personal liability.
C: Yes, because the buyer assumed the mortgage and therefore became personally liable for the mortgage loan and any deficiency.
D: Yes, because the transfer of the mortgage debt to the buyer resulted in a novation of the original mortgage and loan and rendered the buyer solely responsible for any deficiency.

The explanation for the answer is:

Answer C is correct. With a mortgage assumption, the buyer who assumes the mortgage debt becomes primarily liable for any deficiency. The man, absent a release by the bank, also is liable, although the man is secondarily liable. This situation can be contrasted with one in which the buyer purchased "subject to the mortgage," in which case only the man would be liable for any deficiency. Thus, Answer C is correct.

Answer A is incorrect because, as explained above, the man may be secondarily liable for the mortgage if the buyer cannot satisfy the deficiency.

Answer B is incorrect. The agreement in the contract to assume the mortgage created the primary liability for the deficiency in the buyer. The buyer did not have to sign the promissory note to become liable. The buyer is primarily liable. Absent a release by the bank, the man also is liable, although the man is secondarily liable for any deficiency.

Answer D is incorrect. A novation occurs when the bank agrees to substitute the personal liability of the buyer for that of the original debtor, who is then released. In that case there would be an assumption with novation. Here there was no agreement by the bank to release the man from liability and to substitute the buyer as being solely liable for the debt.

Question 1322 - Real Property - Contract

The question was:

A seller owned a single family house. A buyer gave the seller a signed handwritten offer to purchase the house. The offer was unconditional and sufficient to satisfy the statute of frauds, and when the seller signed an acceptance an enforceable contract resulted.

The house on the land had been the seller's home, but he had moved to an apartment, so the house was vacant at all times relevant to the proposed transaction. Two weeks after the parties had entered into their contract, one week after the buyer had obtained a written mortgage lending commitment from a lender, and one week before the agreed-upon closing date, the house was struck by lightning and burned to the ground. The loss was not insured, because three years earlier, the seller had let his homeowner's insurance policy lapse after he had paid his mortgage debt in full.

The handwritten contract was wholly silent as to matters of financing, risk of loss, and insurance. The buyer declared the contract voided by the fire, but the seller asserted a right to enforce the contract despite the loss.

There is no applicable statute.

If a court finds for the seller, what is the likely reason?

A: The contract was construed against the buyer, who drafted it.
B: The lender's written commitment to make a mortgage loan to the buyer made the contract of sale fully binding on the buyer.
C: The risk of loss falls on the party in possession, and constructive possession passed to the buyer on the contract date.
D: The risk of loss passed to the buyer on the contract date under the doctrine of equitable conversion.

The explanation for the answer is:

Answer D is correct. Under the doctrine of equitable conversion, the risk of loss goes to the party with the equitable title if the contract is silent. Equitable conversion occurs when the contract is capable of specific performance. This contract was silent regarding the risk of loss and there were no conditions to be met. The buyer thus had the equitable title at the time of the loss. If there is no statute, the Uniform Vendor and Purchaser Act, which places the risk of loss on the one in possession, is not applicable. The court found for the seller, and thus the minority common law rule, which places the risk on the seller under these facts, is inapplicable. Thus, Answer D is correct.

Answer A is incorrect. It is not relevant who drafted the contract. The contract was silent regarding any risk of loss. As explained above, under the doctrine of equitable conversion, the equitable title passed to the buyer when the seller signed the contract because the contract was unconditional and was silent regarding the risk of loss.

Answer B is incorrect. There were no conditions in the contract of sale. The contract became binding when the seller signed the acceptance. The buyer would have been obligated to purchase even if the buyer had not received a loan commitment. As explained above, under the doctrine of equitable conversion, the equitable title passed to the buyer when the seller signed the contract because the contract was unconditional and was silent regarding the risk of loss.

Answer C is incorrect. Possession does not pass to the buyer until closing absent a contrary provision in the contract of sale. As explained above, under the doctrine of equitable conversion, the equitable title passed to the buyer when the seller signed the contract because the contract was unconditional and was silent regarding the risk of loss.

Question 1327 - Real Property - Titles

The question was:

A man died testate. The man's estate consisted of a residence as well as significant personal property. By his duly probated will, the man devised the residence to a friend who was specifically identified in the will. The residue of the estate was given to a stated charity.

The man's friend, although alive at the time the man executed the will, predeceased the man. The friend's wife and their child, who has a disability, survived the man.

The value of the residence has increased significantly because of recent zoning changes. There is credible extrinsic evidence that the man wanted his friend to own the residence after the man's death so that the friend and his wife could care for their child there.

There is no applicable statute.

If both the charity and the child claim the residence, to whom should the estate distribute the residence?

A: The charity, because the devise to the friend adeemed.
B: The charity, because the devise to the friend lapsed.
C: The child, because extrinsic evidence exists that the man's intent was to benefit the child.
D: The child, because no conditions of survivorship were noted in the will.

The explanation for the answer is:

Answer B is correct. A deceased person cannot take and hold title to property. If a named beneficiary predeceases the testator, the gift to that beneficiary lapses. In this case, the gift to the friend lapsed because the friend predeceased the man. The gift of the residence was a specific gift, and the lapse of this specific gift passes the residence through the residuary clause of the will. The charity is the residuary taker. There is no applicable anti-lapse statute which might have substituted the friend's child as the beneficiary of the bequest if the friend were a protected beneficiary under the statute. Thus, Answer B is correct.

Answer A is incorrect. This option correctly concludes that the charity will prevail but misstates the reasoning. Ademption occurs when a specific gift of property in the will is no longer in the estate at the time of death of the testator. The man made a specific gift of the residence to the friend. At the time of the man's death, the man still owned the residence, and thus there was no ademption. Still, a deceased person cannot take and hold title to property. The specific gift of the residence to the friend, now deceased, lapsed and should pass by way of the residuary clause in the will.

Answer C is incorrect. The gift of the residence in the will was to the friend, who was specifically identified in the will. Nothing was said in the will as to who should receive the residence if the friend predeceased the man, and thus the gift lapsed and passes by the residuary clause to the residuary beneficiary, the charity. The will's meaning is clear. Extrinsic evidence cannot be used to rewrite the will. The will contains no ambiguities which might allow in extrinsic evidence.

Answer D is incorrect. A deceased person cannot take and hold title to property. The specific gift of the residence to the deceased person lapsed and should pass by way of the residuary clause in the will. The man could have noted in the will who would have taken the property in the event the friend did not survive and thus have prevented the lapse from occurring. But because the man did not state what would happen if the friend did not survive him, the gift lapsed.

Question 1332 - Real Property - Mortgages

The question was:

A man owned property that he used as his residence. The man received a loan, secured by a mortgage on the property, from a bank. Later, the man defaulted on the loan. The bank then brought an appropriate action to foreclose the mortgage, was the sole bidder at the judicial sale, and received title to the property as a result of the foreclosure sale.

Shortly after the foreclosure sale, the man received a substantial inheritance. He approached the bank to repurchase the property, but the bank decided to build a branch office on the property and declined to sell.

If the man prevails in an appropriate action to recover title to the property, what is the most likely reason?

A: He had used the property as his residence.
B: He timely exercised an equitable right of redemption.
C: The court applied the doctrine of exoneration.
D: The jurisdiction provides for a statutory right of redemption.

The explanation for the answer is:

Answer D is correct. If the man recovers title to the property, it would be because the jurisdiction provides a statutory right of redemption. A jurisdiction may, by statute, provide a statutory right of redemption, which sets out an additional time period after the foreclosure sale during which the prior mortgagor and perhaps others have the option to pay a certain sum of money and redeem the title to the property. The right arises only by statute and only after there has been a foreclosure of the mortgage. If the jurisdiction provides a statutory right of redemption, it does not matter whether the property being redeemed is residential, commercial, or another type of property, unless the statute so notes. Thus, Answer D is correct and Answer A is incorrect.

Answer B is incorrect. The equitable right of redemption arises prior to foreclosure. The equitable right of redemption gave the man the right to pay what was due or otherwise perform his obligations after default and have his title restored to him. The foreclosure of the mortgage ended the equitable right of redemption. The foreclosure sale occurred and the man lost his ability to redeem under the equitable right of redemption.

Answer C is incorrect. The common law doctrine of exoneration arises when a testator has died and the testator's will devises property which is subject to a mortgage debt for which the testator was personally liable. Exoneration would then direct that the mortgage debt be paid from the assets in the residuary clause. In this case, the man did not die. The property was sold by way of foreclosure.

Question 1333 - Real Property - Mortgages

The question was:

A farmer borrowed $100,000 from a bank and gave the bank a promissory note secured by a mortgage on the farm that she owned. The bank promptly and properly recorded the mortgage, which contained a due-on-sale provision.

A few years later, the farmer borrowed $5,000 from a second bank and gave it a promissory note secured by a mortgage on her farm. The bank promptly and properly recorded the mortgage.

Subsequently, the farmer defaulted on her obligation to the first bank, which then validly accelerated the debt and instituted nonjudicial foreclosure proceedings as permitted by the jurisdiction. The second bank received notice of the foreclosure sale but did not send a representative to the sale. At the foreclosure sale, a buyer who was not acting in collusion with the farmer outbid all other bidders and received a deed to the farm.

Several months later, the original farmer repurchased her farm from the buyer, who executed a warranty deed transferring the farm to her. After the farmer promptly and properly recorded that deed, the second bank commenced foreclosure proceedings on the farm. The farmer denied the validity of the second bank's mortgage.

Does the second bank continue to have a valid mortgage on the farm?

A: Yes, because of the doctrine of estoppel by deed.
B: Yes, because the original owner reacquired title to the farm.
C: No, because the purchase at the foreclosure sale by the buyer under these facts eliminated the second bank's junior mortgage lien.
D: No, because of the due-on-sale provision in the farmer's mortgage to the first bank.

The explanation for the answer is:

Answer C is correct. The first bank had priority. The second bank was a necessary party to the foreclosure proceeding and was given notice of the sale. When the second bank failed to appear at the foreclosure proceeding, or to take any other action, the buyer at the sale received the title the farmer had at the time the mortgage was given to the first bank, which was free of any mortgage liens. The buyer and the farmer did not act in collusion, so there could be no claim of fraud when the farmer reacquired her original interest in the farm. Thus, Answer C is correct and Answer B is incorrect.

Answer A is incorrect. The doctrine of estoppel by deed arises when a person executes a deed purporting to convey an estate which either the person does not have or is larger than what the person has. If that person later acquires that estate, then the subsequently acquired estate passes to the grantee. The doctrine of estoppel by deed is inapplicable in this case because the farmer owned the farm at the time when she executed both mortgages.

Answer D is incorrect. This option correctly concludes that the second bank does not have a valid mortgage on the farm but misstates the rationale. The due-on-sale clause allowed the first bank to accelerate the debt in the event the farmer sold the farm without first seeking the permission of the first bank. The farmer never sold the property and thus the due-on-sale clause was not involved. The property was sold at a foreclosure sale after the farmer went into default.

Question 1344 - Real Property - Contract

The question was:

A seller who owned land in fee simple entered into a valid written agreement to sell the land to a buyer by installment purchase. The contract stipulated that the seller would deliver to the buyer, upon the payment of the last installment due, "a warranty deed sufficient to convey a fee simple title." The contract contained no other provision that could be construed as referring to title.

The buyer entered into possession of the land. After making 10 of the 300 installment payments obligated under the contract, the buyer discovered that there was outstanding a valid and enforceable mortgage on the land, securing the payment of a debt in the amount of 25 percent of the purchase price that the buyer had agreed to pay. There was no evidence that the seller had ever been late in payments due under the mortgage and there was no evidence of any danger of insolvency of the seller. The value of the land was then four times the amount due on the debt secured by the mortgage.

The buyer quit possession of the land, stopped making payments on the contract, and demanded that the seller repay the amounts that the buyer had paid under the contract. After the seller refused the demand, the buyer sued the seller to recover damages for the seller's alleged breach of the contract.

In such action, should damages be awarded to the buyer?

A: Yes, because in the absence of a contrary express agreement, an obligation to convey marketable title is implied.
B: Yes, because an installment purchase contract is treated as a mortgage and the outstanding mortgage impairs the buyer's equity of redemption.
C: No, because an installment purchase contract is treated as a security device.
D: No, because the time for the seller to deliver marketable title has not arrived.

The explanation for the answer is:

Answer D is correct. Title does not have to be marketable until the closing date when all payments have been received. The buyer still has 290 payments to make. A mortgage can render title unmarketable but it is most likely that title will be marketable when all payments have been made by the buyer under the agreement. The seller has made all mortgage payments timely. The amount of the mortgage debt is 25 percent of the purchase price the buyer will pay, and the land is four times more valuable than the debt owed, so it is likely that the mortgage debt will be paid off by the time the seller must provide the warranty deed, and thus the buyer is not entitled to damages at this time. Thus, Answer D is correct.

Answer A is incorrect. It is true that in the absence of a contrary express agreement there is an obligation to convey a marketable title. A mortgage is an interest held by a third party and does make title unmarketable. The time for title to be marketable, however, is at the closing, when the seller is to provide the warranty deed. The buyer has an obligation to make 290 more payments before the time for closing arises. If the title is not marketable at the time when all payments have been made, then the buyer may to sue for damages.

Answer B is incorrect. An installment purchase contract is often treated as a mortgage, and on default there must be a foreclosure of the buyer's equity of redemption. In this case, the buyer may have stopped making payments, but the seller has not yet sought to enforce the installment purchase contract. Because it is the buyer who is seeking damages, the buyer's equity of redemption is not at issue.

Answer C is incorrect. This option correctly concludes that damages will not be awarded but for the wrong reason. An installment purchase contract is a seller's security device. Payments are made over time and, when all payments have been made, a deed will be given. Title does not have to be marketable until all payments have been made. An existing mortgage lien does make the title unmarketable, but it is likely that the lien will have disappeared when the deed is to be given. A buyer may be able to object earlier only if it appears unlikely that the seller will be able to provide a marketable title at that time. Under the facts given, the seller has made all mortgage payments timely. The amount of the mortgage debt is 25 percent of the purchase price the buyer will pay and the land is four times more valuable than the debt owed. It is most likely that title will be

Question 1344 - Real Property - Contract

marketable at the time when all payments have been made under the agreement. If not, that is the time for the buyer to sue for damages.

Question 1353 - Real Property - Contract

The question was:

By a valid written contract, a seller agreed to sell land to a buyer. The contract stated, "The parties agree that closing will occur on next May 1 at 10 a.m." There was no other reference to closing. The contract was silent as to quality of title.

On April 27, the seller notified the buyer that she had discovered that the land was subject to a longstanding easement in favor of a corporation for a towpath for a canal, should the corporation ever want to build a canal.

The buyer thought it so unlikely that a canal would be built that the closing should occur notwithstanding this outstanding easement. Therefore, the buyer notified the seller on April 28 that he would expect to close on May 1.

When the seller refused to close, the buyer sued for specific performance.

Will the buyer prevail?

A: No, because the easement renders the seller's title unmarketable.
B: No, because rights of third parties are unresolved.
C: Yes, because the decision to terminate the contract for title not being marketable belongs only to the buyer.
D: Yes, because the seller did not give notice of the easement a reasonable time before the closing date.

The explanation for the answer is:

Answer C is correct. If a contract of sale is silent as to quality of title, the court will imply a marketable title, and an easement does affect the marketability of title. But while the seller has a duty to deliver a marketable title, the requirement of marketable title is for the benefit of the buyer. The buyer may waive the right to have a marketable title, which is what the buyer did in this fact situation. Thus, Answer C is correct.

Answer A is incorrect because, as explained above, even though the easement renders the title unmarketable, the buyer may waive the right to have a marketable title, as occured here.

Answer B is incorrect. The corporation does have an easement on the land and the easement does render title unmarketable. However, the corporation's rights in the land are resolved--the corporation has an easement on the property. The sale of the land will not affect the corporation's easement. As explained above, the requirement of marketable title is for the benefit of the buyer, and the buyer may waive the right to receive a marketable title. The buyer may accept the land with the easement, as the buyer did in this fact situation.

Answer D is incorrect. This option correctly concludes that the buyer will prevail but misstates the rationale. If a contract of sale is silent as to quality of title, the court will imply a marketable title, and an easement does affect the marketability of title. Title is to be marketable at the time of closing. If a buyer discovers a defect which makes title objectionable, the buyer must notify the seller with specificity and allow the seller a reasonable time to cure the defect. Under these facts, the buyer waived the right to have a marketable title and is not asking the seller to remove the defect, so the buyer can enforce the contract.

Question 1370 - Real Property - Ownership

The question was:

Six years ago, a landlord and a tenant entered into a 10-year commercial lease of land. The written lease provided that, if a public entity under the power of eminent domain condemned any part of the land, the lease would terminate and the landlord would receive the entire condemnation award. Thereafter, the city condemned approximately two-thirds of the land.

The tenant notified the city and the landlord that an independent appraisal of the value of the tenant's possessory interest established that it substantially exceeded the tenant's obligation under the lease and that the tenant was entitled to share the award. The appraisal was accurate.

In an appropriate action among the landlord, the tenant, and the city as to the right of the tenant to a portion of the condemnation award, for whom will the court likely find?

A: The landlord, because the condemnation superseded and canceled the lease.
B: The landlord, because the parties specifically agreed as to the consequences of condemnation.
C: The tenant, because the landlord breached the landlord's implied warranty of quiet enjoyment.
D: The tenant, because otherwise the landlord would be unjustly enriched.

The explanation for the answer is:

Answer B is correct. The landlord and the tenant agreed in the lease that if any part of the land was condemned, the lease would terminate and the landlord would receive the entire condemnation award.

Answer A is incorrect. The option correctly concludes that the landlord will prevail but misstates the reasoning. If the city had condemned all of the land, the lease would have terminated and the tenant might have been able to receive the sum by which the award exceeds the tenant's obligations under the lease. The city condemned only two-thirds of the land. Under these facts, the lease provision provided that the lease would terminate and that the landlord would receive the entire condemnation award.

Answer C is incorrect. The taking of all or part of leased land under the power of eminent domain is not a breach of the landlord's warranty of quiet enjoyment. The condemnation occurred through no fault of the landlord. Under these facts, the lease provision provided that the lease would terminate and that the landlord would receive the entire condemnation award.

Answer D is incorrect. If all the leased premises had been condemned, the lease would have terminated by operation of law. Here, only a portion of the land was condemned. If the lease had not otherwise provided, the tenant's obligation under the lease to pay rent would have continued (though it might have been abated). Here the tenant and the landlord agreed that the lease would terminate upon condemnation of any portion of the land and that the landlord could retain all of the condemnation award. There was no unjust enrichment.

Question 1373 - Real Property - Contract

The question was:

A niece inherited vacant land from her uncle. She lived in a distant state and decided to sell the land to a colleague who was interested in purchasing the land as an investment. They orally agreed upon a price, and, at the colleague's insistence, the niece agreed to provide him with a warranty deed without any exceptions. The price was paid, the warranty deed was delivered, and the deed was promptly and properly recorded. Neither the niece nor the colleague had, at that point, ever seen the land.

After recording the deed, the colleague visited the land for the first time and discovered that it had no access to any public right-of-way and that none of the surrounding lands had ever been held in common ownership with any previous owner of the tract of land.

The colleague sued the niece for damages.

For whom will the court find?

A: The colleague, because lack of access makes title unmarketable.
B: The colleague, because the covenants of warranty and quiet enjoyment in the deed were breached.
C: The niece, because no title covenants were breached.
D: The niece, because the agreement to sell was oral.

The explanation for the answer is:

Answer C is correct. Lack of access may render title unmarketable under the contract of sale; however, the time to challenge marketable title is prior to the acceptance of the deed. Thus, Answer A is incorrect because the colleague accepted the deed, completing the contract of sale.

Under the doctrine of merger, the remedy, if any, is on the title covenant in the deed. Lack of access does not violate any of the title covenants. The colleague received the title the niece said she had. No one had a superior title and thus the covenants of seisin, right to convey, quiet enjoyment, and general warranty were not breached. The covenant against encumbrances provides protection for interests held by third parties such as easements for access. The land was not subject to an express easement nor may any easement be implied based on either prior use or necessity because the lands were never held in common ownership. Thus, Answer C is correct and Answer B is incorrect.

Answer D is incorrect. This option correctly concludes that the niece will prevail but misstates the reasoning. The Statute of Frauds does require that an agreement to sell land be in writing. Nonetheless, if the parties have both fully performed under an oral contract, the relationship is the same as if the statute had been fully complied with initially. It is too late for the colleague, having accepted the deed, to now complain that the Statute of Frauds was not complied with because the agreement was oral.

Question 1377 - Real Property - Mortgages

The question was:

A landowner mortgaged her land to a nationally chartered bank as security for a loan. The mortgage provided that the bank could, at its option, declare the entire loan due and payable if all or any part of the land, or an interest therein, was sold or transferred without the bank's prior written consent.

Subsequently, the landowner wanted to sell the land to a neighbor by an installment land contract, but the bank refused to consent. The neighbor's credit was good, and all mortgage payments to the bank were fully current.

The landowner and the neighbor consulted an attorney about their proposed transaction, their desire to complete it, and the bank's refusal to consent.

What would the attorney's best advice be?

A: Even if the landowner transfers to the neighbor by land contract, the bank may accelerate the debt and foreclose if the full amount is not paid.
B: The due-on-sale clause is void as an illegal restraint on alienation of the fee simple, so they may proceed.
C: By making the transfer in land contract form, the landowner will prevent enforcement of the due-on-sale clause if the mortgage payments are kept current.
D: The due-on-sale clause has only the effect that the proposed transfer will automatically make the neighbor personally liable on the debt, whether or not the neighbor specifically agrees to assume it.

The explanation for the answer is:

Answer A is correct. The mortgage contains a valid due-on-sale clause. If the landowner conveys the land without the prior consent of the bank, the bank may accelerate the debt. A sale by use of an installment land contract is a transfer of the land which can trigger the due-on-sale clause.

Answer B is incorrect. A due-on-sale clause in a mortgage granted to a nationally chartered bank is valid and is not an illegal restraint on alienation. The Garn-St. Germain Depository Institutions Act preempts any state law to the contrary.

Answer C is incorrect. The landowner may sell the land by an installment land contract. Such a sale would be a transfer, however, which would allow the bank to accelerate the debt if the prior consent of the bank had not been received. It is irrelevant whether the mortgage payments are current at the time of the land contract execution.

Answer D is incorrect. The proposed transfer will not make the neighbor personally liable on the debt. The neighbor would be personally liable on the mortgage debt only if the neighbor expressly assumed the mortgage debt. If the transfer is made without its consent, the bank may accelerate the debt. If the entire debt is not paid, the bank could bring a foreclosure proceeding.

Question 1380 - Real Property - Rights in Land

The question was:

A man contacted his lawyer regarding his right to use a path that was on his neighbor's vacant land.

Fifteen years ago, after a part of the path located on his land and connecting his cabin to the public highway washed out, the man cleared a small part of his neighbor's land and rerouted a section of the path through the neighbor's land.

Twelve years ago, the neighbor leased her land to some hunters. For the next 12 years, the hunters and the man who had rerouted the path used the path for access to the highway.

A month ago, the neighbor discovered that part of the path was on her land. The neighbor told the man that she had not given him permission to cross her land and that she would be closing the rerouted path after 90 days.

The man's land and the neighbor's land have never been in common ownership.

The period of time necessary to acquire rights by prescription in the jurisdiction is 10 years. The period of time necessary to acquire title by adverse possession in the jurisdiction is 10 years.

What should the lawyer tell the man concerning his right to use the rerouted path on the neighbor's land?

A: The man has fee title by adverse possession of the land included in the path.
B: The man has an easement by necessity to use the path.
C: The man has an easement by prescription to use the path.
D: The man has no right to use the path.

The explanation for the answer is:

Answer C is correct. The man is claiming a right to use the land of the neighbor, which is an easement. An easement by prescription requires that the use be without the neighbor's permission for the requisite period of time. The man has used the path for the past 15 years without the neighbor's permission. His use was open and notorious in that the neighbor could have seen him. His use was continuous and without interruption by the neighbor. His use was actual. An easement acquired by prescription need not be exclusive. With an easement, the owner may make any use of the easement area that does not interfere with the use made by the easement holder unless the easement is expressly noted as exclusive. The use by the neighbor's tenants (the hunters) did not interfere with the man's use, nor did his use interfere with theirs. Thus, Answer C is correct and Answer D is incorrect.

Answer A is incorrect. The man's use of the neighbor's land for the past 15 years was without the permission of the neighbor and was thus adverse. It was open and notorious in that the neighbor could have seen him. His use was continuous and without interruption by the neighbor. His use was actual. These elements are needed to acquire a title by adverse possession. The man's use of the land, however, was not exclusive. The man shared the use of the path with the neighbor's tenants. Thus the man did not acquire a title by adverse possession. In addition, the man claims only a right to use the land, which would be an easement rather than ownership of the land itself.

Answer B is incorrect. An easement by necessity may be implied only if the lands had been in common ownership and the strict necessity for the easement existed at the time of severance. The man's land and the neighbor's land have never been in common ownership.

Question 1387 - Real Property - Titles

The question was:

Twenty-five years ago, a man who owned a 45-acre tract of land conveyed 40 of the 45 acres to a developer by warranty deed. The man retained the rear five-acre portion of the land and continues to live there in a large farmhouse.

The deed to the 40-acre tract was promptly and properly recorded. It contained the following language:

"It is a term and condition of this deed, which shall be a covenant running with the land and binding on all owners, their heirs and assigns, that no use shall be made of the 40-acre tract of land except for residential purposes."

Subsequently, the developer fully developed the 40-acre tract into a residential subdivision consisting of 40 lots with a single-family residence on each lot.

Although there have been multiple transfers of ownership of each of the 40 lots within the subdivision, none of them included a reference to the quoted provision in the deed from the man to the developer, nor did any deed to a subdivision lot create any new covenants restricting use.

Last year, a major new medical center was constructed adjacent to the subdivision. A doctor who owns a house in the subdivision wishes to relocate her medical offices to her house. For the first time, the doctor learned of the restrictive covenant in the deed from the man to the developer. The applicable zoning ordinance permits the doctor's intended use. The man, as owner of the five-acre tract, however, objects to the doctor's proposed use of her property.

There are no governing statutes other than the zoning code. The common law Rule Against Perpetuities is unmodified in the jurisdiction.

Can the doctor convert her house in the subdivision into a medical office?

A: No, because the owners of lots in the subdivision own property benefitted by the original residential covenant and have the sole right to enforce it.
B: No, because the man owns property benefitted by the original restrictive covenant and has a right to enforce it.
C: Yes, because the original restrictive covenant violates the Rule Against Perpetuities.
D: Yes, because the zoning ordinance allows the doctor's proposed use and preempts the restrictive covenant.

The explanation for the answer is:

Answer B is correct. The restrictive covenant created 25 years ago placed a burden on the 40-acre tract of land and gave the right to enforce the promise to the man who retained the ownership of the benefitted five-acre tract of land. The man may enforce the promise because he owns the benefitted tract of land. It may be that the owners in the subdivision also may enforce the promise; however, the man, as owner of the original benefitted five-acre tract of land, also may enforce it. Thus, Answer B is correct and Answer A is incorrect.

Answer C is incorrect. The restrictive covenant is not an interest which is affected by the Rule Against Perpetuities. The restrictive covenant is still valid, and no facts are stated which indicate that it has terminated.

Answer D is incorrect. The zoning ordinance does allow the doctor's proposed use. The zoning ordinance does not, however, preempt the valid restrictive covenant. The restrictive covenant, as the more restrictive of the two in terms of its limitations, prevails.

Question 1389 - Real Property - Titles

The question was:

Five years ago, an investor who owned a vacant lot in a residential area borrowed $25,000 from a friend and gave the friend a note for $25,000 due in five years, secured by a mortgage on the lot. The friend neglected to record the mortgage. The fair market value of the lot was then $25,000.

Three years ago, the investor discovered that the friend had not recorded his mortgage and in consideration of $50,000 conveyed the lot to a buyer. The fair market value of the lot was then $50,000. The buyer knew nothing of the friend's mortgage. One month thereafter, the friend discovered the sale to the buyer, recorded his $25,000 mortgage, and notified the buyer that he held a $25,000 mortgage on the lot.

Two years ago, the buyer needed funds. Although she told her bank of the mortgage claimed by the investor's friend, the bank loaned her $15,000, and she gave the bank a note for $15,000 due in two years secured by a mortgage on the lot. The bank promptly and properly recorded the mortgage. At that time, the fair market value of the lot was $75,000.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

Both notes are now due and both the investor and the buyer have refused to pay. The lot is now worth only $50,000.

What are the rights of the investor's friend and the bank in the lot?

A: Both mortgages are enforceable liens and the friend's has priority because it was first recorded.
B: Both mortgages are enforceable liens, but the bank's has priority because the buyer was an innocent purchaser for value.
C: Only the friend's mortgage is an enforceable lien, because the bank had actual and constructive notice of the investor's fraud.
D: Only the bank's mortgage is an enforceable lien, because the buyer was an innocent purchaser for value.

The explanation for the answer is:

Answer D is correct. The friend does not have an enforceable lien. The friend did have a lien on the lot when the investor granted the friend a mortgage. The friend, however, did not record the mortgage. The investor then sold the lot to the buyer. The buyer had no actual notice of the mortgage to the friend. The buyer had no notice based on possession because the lot was vacant. The buyer had no constructive notice of the mortgage because the mortgage to the friend had not been recorded when the buyer received title. The lot is located in a notice jurisdiction. The fact that the buyer was an innocent purchaser for value at the time the buyer received title qualifies the buyer for protection in a notice jurisdiction. The buyer took the lot free of any prior unrecorded documents; specifically, the friend's mortgage. The fact that the friend later recorded the mortgage is irrelevant in a notice jurisdiction--the notice given to the buyer was given too late. The bank's mortgage is an enforceable lien. Thus, Answer D is correct, and Answers A, B, and C are incorrect.

Question 1394 - Real Property - Ownership

The question was:

A grantor owned two tracts of land, one of 15 acres and another of five acres. The two tracts were a mile apart.

Fifteen years ago, the grantor conveyed the smaller tract to a grantee. The grantor retained the larger tract. The deed to the grantee contained, in addition to proper legal descriptions of both properties and identifications of the parties, the following:

I, the grantor, bind myself and my heirs and assigns that in the event that the larger tract that I now retain is ever offered for sale, I will notify the grantee and his heirs and assigns in writing, and the grantee and his heirs and assigns shall have the right to purchase the larger tract for its fair market value as determined by a board consisting of three qualified expert independent real estate appraisers.

With appropriate references to the other property and the parties, there followed a reciprocal provision that conferred upon the grantor and her heirs and assigns a similar right to purchase the smaller tract, purportedly binding the grantee and his heirs and assigns.

Ten years ago, a corporation acquired the larger tract from the grantor. At that time, the grantee had no interest in acquiring the larger tract and by an appropriate written document released any interest he or his heirs or assigns might have had in the larger tract.

Last year, the grantee died. The smaller tract passed by the grantee's will to his daughter. She has decided to sell the smaller tract. However, because she believes the corporation has been a very poor steward of the larger tract, she refuses to sell the smaller tract to the corporation even though she has offered it for sale in the local real estate market.

The corporation brought an appropriate action for specific performance after taking all of the necessary preliminary steps in its effort to exercise its rights to purchase the smaller tract.

The daughter asserted all possible defenses.

The common law Rule Against Perpetuities is unmodified in the jurisdiction.

If the court rules for the daughter, what is the reason?

A: The provision setting out the right to purchase violates the Rule Against Perpetuities.
B: The grantee's release 10 years ago operates as a waiver regarding any right to purchase that the corporation might have.
C: The two tracts of land were not adjacent parcels of real estate, and thus the right to purchase is in gross and is therefore unenforceable.
D: Noncompliance with a right to purchase gives rise to a claim for money damages, but not for specific performance.

The explanation for the answer is:

Answer A is correct. Fifteen years ago each of the parties granted a reciprocal right of first refusal (or a preemptive right) to the other. A right of first refusal is a conditional option. It provides that if the owner ever decides to sell the property, the one holding the right of first refusal has the right to purchase it. In this case, the price for the purchase was to be set by three qualified expert independent real estate appraisers and was thus fair. The right, however, violates the common law Rule Against Perpetuities. The right to purchase is triggered by the decision of one to sell his or her land. In this case, that decision might occur more than 21 years after a life in being at the time the right was granted. Thus, under the common law, the right of first refusal is struck ab initio. The question notes that the common law Rule Against Perpetuities is unmodified in this jurisdiction. Thus, there are no applicable statutory reforms to the rule, and because the question is written with the daughter winning, any statute which may exempt a commercial transaction is inapplicable. Thus,

Question 1394 - Real Property - Ownership

Answer A is correct.

Answer B is incorrect. Ten years ago, the grantee had the right to purchase the larger tract of land under the right of first refusal (or a preemptive right) given to the grantee. The grantee chose not to exercise that right. The fact that the grantee chose not to exercise the right of first refusal has no effect on whether the grantor can exercise the reciprocal right of first refusal regarding the grantee's land. However, as described above, the reciprocal rights of first refusal violated the common law Rule Against Perpetuities and would be struck at once, with neither party able to enforce the right.

Answer C is incorrect. A right of first refusal may have been granted as to only one of the tracts of land. Here, the rights were reciprocal as to two tracts of land. It does not matter that the tracts were not adjacent. As explained above, however, the reciprocal rights of first refusal violate the common law Rule Against Perpetuities and would be struck at once, with neither party able to enforce the right.

Answer D is incorrect. As explained above, the reciprocal right of first refusal violates the common law Rule Against Perpetuities. Thus, it would be struck at once, with neither party able to enforce the right either for money damages or for specific performance.

Question 1402 - Real Property - Contract

The question was:

A landlord and a tenant orally agreed to a commercial tenancy for a term of six months beginning on July 1. Rent was to be paid by the first day of each month, and the tenant paid the first month's rent at the time of the agreement.

When the tenant arrived at the leased premises on July 1, the tenant learned that the previous tenant had not vacated the premises at the end of her lease term on May 31 and did not intend to vacate. The tenant then successfully sued the previous tenant for possession. The tenant did not inform the landlord of the eviction action until after the tenant received possession.

The tenant then sued the landlord, claiming damages for that portion of the lease period during which the tenant was not in possession.

If the court finds for the landlord, what will be the most likely explanation?

A: By suing the previous tenant for possession, the tenant elected that remedy in lieu of a suit against the landlord.
B: The landlord had delivered the legal right of possession to the tenant.
C: The tenant failed to timely vacate as required to sue for constructive eviction.
D: The tenant had not notified the landlord before bringing the eviction action.

The explanation for the answer is:

Answer B is correct. The landlord granted the legal right of possession to the tenant, which means that neither the landlord nor anyone holding of the landlord prevented the tenant from going into possession at the commencement of the lease term. The previous tenant's lease term had ended before the new lease term began. The previous tenant then became a trespasser and was not holding of the landlord. As stated in the question, the court found for the landlord, and thus there is no rule in this jurisdiction that the landlord need also put the tenant into actual possession.

Answer A is incorrect. The tenant did not waive any claim against the landlord by first suing the previous tenant. In the absence of a statute requiring delivery of actual possession of the premises, a landlord need deliver only legal possession to the tenant on the first day of the lease term. The previous tenant's lease term had ended automatically before the new lease term began. The previous tenant then became a trespasser and was not holding of the landlord. Legal possession was delivered to the tenant because neither the landlord nor one holding of the landlord was in possession at the commencement of the tenant's lease.

Answer C is incorrect. The tenant has not been constructively evicted. The previous tenant's lease term had ended automatically before the new lease term began. The previous tenant then became a trespasser and was not holding of the landlord. The landlord prevailed, and thus this jurisdiction follows the view that a landlord has a duty to deliver only legal possession to the tenant at the commencement of the lease and need not also deliver actual possession. Legal possession was delivered to the tenant because neither the landlord nor one holding of the landlord was in possession at the commencement of the tenant's lease term.

Answer D is incorrect. The landlord delivered legal possession to the tenant, which means that neither the landlord nor one holding of the landlord was in possession at the commencement of the tenant's lease term. The previous tenant's lease term had ended automatically before the new lease term began. The previous tenant then became a trespasser and was not holding of the landlord. The landlord prevailed, and thus this jurisdiction follows the rule that the landlord need not deliver actual possession to a new tenant. The tenant did not need to notify the landlord of the eviction suit because it was the tenant's responsibility to evict the previous tenant.

Question 1412 - Real Property - Contract

The question was:

Six months ago, a man told his cousin that he would give her his farm as a gift on her next birthday. The cousin then entered into a valid written contract to sell the farm to an investor with the closing to take place "one week after [the cousin's] next birthday."

The man failed to convey the farm to the cousin on her birthday. One week after the cousin's birthday, on the intended closing date, the investor first learned of the cousin's inability to convey the farm because the man had breached his promise. The investor considered suing the cousin but realized that she could not compel the cousin to convey the farm because it was still owned by the man.

Two weeks after the cousin's birthday, the man died. Under his valid will, the man devised the farm to the cousin. Within a week, the executor of the man's estate gave the cousin an executor's deed to the farm in compliance with state law. The investor promptly learned of this transfer and demanded that the cousin convey the farm to her. The cousin refused.

The investor sued the cousin for specific performance.

Who will likely prevail?

A: The cousin, because the contract to convey was not signed by the legal owner of the farm as of the date of the contract and was therefore void.
B: The cousin, because she received title by devise rather than by conveyance.
C: The investor, because the contract to convey merged into the executor's deed to the cousin.
D: The investor, because the contract to convey remained enforceable by her within a reasonable period of time after the proposed closing date.

The explanation for the answer is:

Answer D is correct. The cousin and the investor had a valid contract for the sale of the farm. The contract did not specify that time was of the essence, and thus the investor should be able to enforce the contract within a reasonable time after the proposed closing date. The cousin acquired the land two weeks after the intended closing date, which was within a reasonable time period afterward.

Answer A is incorrect because a person can sign a valid contract of sale for land even if that person does not own the land at the time of signing.

Answer B is incorrect because the cousin and the investor had a valid contract for the sale of land, and it does not matter whether the cousin acquired title to the land by conveyance or by will.

Answer C is incorrect because although the contract of sale between the cousin and the investor might merge on the conveyance of the farm by the cousin to the investor, the executor's deed to the cousin had no effect on the contract between the cousin and the investor.

Question 1417 - Real Property - Ownership

The question was:

A mother who died testate devised her farm to her son and her daughter as "joint tenants with right of survivorship." The language of the will was sufficient to create a common law joint tenancy with right of survivorship, which is unmodified by statute in the jurisdiction. After the mother's death and with the daughter's permission, the son took sole possession of the farm and agreed to pay the daughter a stipulated monthly rent.

Several years later, the son defaulted on a personal loan, and his creditor obtained a judgment against him for $30,000. The creditor promptly and properly filed the judgment.

A statute of the jurisdiction provides: "Any judgment properly filed shall, for 10 years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

Six months later, the son died.

There are no other applicable statutes.

Is the creditor entitled to enforce its judgment lien against the farm?

A: No, because the daughter became sole owner of the farm free and clear of the creditor's judgment lien when the son died.
B: No, because the son's interest was severed from the daughter's interest upon the filing of the lien.
C: Yes, because a joint tenancy cannot be created by devise, and the son died owning a 50% undivided interest in the farm as a tenant in common.
D: Yes, because the son died owning a 50% undivided interest in the farm as a joint tenant with the daughter.

The explanation for the answer is:

Answer A is correct. A joint tenancy with right of survivorship can be created by devise or by conveyance provided the intent to create a right of survivorship is expressly stated, and in this case the mother's devise included express words of survivorship. Thus, Answer C is incorrect.

The joint tenancy with right of survivorship ended on the death of the son, and the daughter, as the survivor, became the sole owner of the farm. Thus, Answer D is incorrect.

With respect to the judgment lien, the recording of such a lien against a joint tenant with right of survivorship allows the judgment creditor to obtain a writ of execution but does not effect a severance of the joint tenancy. The son's creditor failed to execute on the judgment against the son before his death, and the daughter, as the survivor, became the sole owner of the farm. Thus, Answer A is correct.

Answer B is incorrect. Although this response correctly concludes that the creditor cannot enforce its lien against the farm, it misstates the rationale.

Question 1431 - Real Property - Mortgages

The question was:

A landowner borrowed $100,000 from a lender and executed a valid mortgage on a commercial tract of land to secure the debt. The lender promptly recorded the mortgage.

A year later, the landowner conveyed the same tract to a developer by a deed that expressly stated that the conveyance was subject to the mortgage to the lender and that the grantee expressly assumed and agreed to pay the mortgage obligation as part of the consideration for the purchase. The mortgage was properly described in the deed, and the deed was properly executed by the landowner; however, because there was no provision or place in the deed for the developer to sign, he did not do so. The developer promptly recorded the deed.

The developer made the monthly mortgage payments of principal and interest for six payments but then stopped payments and defaulted on the mortgage obligation. The lender properly instituted foreclosure procedures in accordance with the governing law. After the foreclosure sale, there was a $10,000 deficiency due to the lender. Both the landowner and the developer had sufficient assets to pay the deficiency.

There is no applicable statute in the jurisdiction other than the statute relating to foreclosure proceedings.

At the appropriate stage of the foreclosure action, which party will the court decide is responsible for payment of the deficiency?

A: The developer, because he accepted delivery of the deed from the landowner and in so doing accepted the terms and conditions of the deed.
B: The developer, because he is estopped by his having made six monthly payments to the lender.
C: The landowner, because the developer was not a signatory to the deed.
D: The landowner, because he was the maker of the note and the mortgage, and at most the developer is liable only as a guarantor of the landowner's obligation.

The explanation for the answer is:

Answer A is correct. The deed stated that the conveyance was subject to the lender's mortgage and that the grantee expressly assumed and agreed to pay the mortgage obligation as part of the consideration. While the developer did not sign the deed, the developer accepted the deed and recorded it, thereby agreeing to the mortgage assumption. When the developer assumed the mortgage obligation, the developer became personally liable to the lender, and the landowner became merely a surety. The developer, having sufficient assets to pay the deficiency judgment, must do so.

Answer B is incorrect. Although this response correctly concludes that the developer is responsible for payment of the deficiency, it misstates the reason. It does not matter whether or for how long the developer paid on the mortgage. As stated above, the deed to the developer stated that the conveyance was subject to the lender's mortgage and that the grantee expressly assumed and agreed to pay the mortgage obligation as part of the consideration. The developer, having sufficient assets to pay the deficiency judgment, must do so.

Answer C is incorrect. The developer received a deed poll (a deed that is signed only by the grantor, in this case the landowner). The grantee of a deed poll need not sign the deed, but if the grantee accepts the deed, he or she accepts all conditions in it. The developer did accept the deed and recorded it. The deed stated that the conveyance was subject to the lender's mortgage and that the grantee (the developer) expressly assumed and agreed to pay the mortgage obligation as part of the consideration. When the developer assumed the mortgage obligation, the developer became personally liable to the lender, and the landowner became merely a surety. The developer, having sufficient assets to pay the deficiency judgment, must do so.

Answer D is incorrect. In the deed to the developer it was stated that the conveyance was subject to the lender's mortgage and that the grantee expressly assumed and agreed to pay the mortgage obligation as part of the consideration. The developer accepted the deed and recorded it, thereby agreeing to the mortgage assumption and becoming more than a mere guarantor of the obligation. When the developer assumed the

Question 1431 - Real Property - Mortgages

mortgage obligation, the developer became personally liable to the mortgagee, and the landowner became merely a surety. The developer, having sufficient assets to pay the deficiency judgment, must do so.

Question 1434 - Real Property - Ownership

The question was:

Seven years ago, a man, his sister, and his cousin became equal owners, as tenants in common, of a house. Until a year ago, the man lived in the house alone. The sister and the cousin are longtime residents of another state.

One year ago, the man moved to an apartment and rented the house to a tenant for three years under a lease that the man and the tenant both signed. The tenant has since paid the rent each month to the man.

Recently, the sister and the cousin learned about the rental. They brought an appropriate action against the tenant to have the lease declared void and to have the tenant evicted. The tenant raised all available defenses.

What will the court likely decide?

A: The lease is void, and the tenant is evicted.
B: The lease is valid, and the tenant retains exclusive occupancy rights for the balance of the term.
C: The lease is valid, but the tenant is evicted because one-third of the lease term has expired and the man had only a one-third interest to transfer.
D: The lease is valid, and the tenant is not evicted but must share possession with the sister and the cousin.

The explanation for the answer is:

Answer D is correct. An individual tenant in common may transfer his or her undivided interest by a lease for a term of years. The tenant obtains only the transferor's concurrent right of possession with the other tenants in common. The man, as a tenant in common, validly transferred his interest in the tenancy in common to the tenant by a lease for a term of years. The tenant must, however, share the right of possession with the other cotenants, the sister and the cousin, for the term of the lease. The man must share the rental income with the sister and the cousin. Thus, Answer D is correct, and Answer A is incorrect.

Answer B is incorrect because it incorrectly states that the tenant has a right of exclusive occupancy.

Answer C is incorrect. This response correctly states that the lease is valid but incorrectly says that the tenant is evicted. The tenant must, however, share the right of possession with the other cotenants, the sister and the cousin, for the term of the lease. It is not relevant that the tenant has been in sole possession for one-third of the lease term, nor is the term of the lease relevant. The man must share the rental income with the sister and the cousin.

Question 1442 - Real Property - Titles

The question was:

A man decided to give his farm to his nephew. The man took a deed to his attorney and told the attorney to deliver the deed to the nephew upon the man's death. The man also told the attorney to return the deed to him if he asked. None of these instructions to the attorney were in writing, and the deed was not recorded. The man then e-mailed the nephew informing him of the arrangement.

Shortly thereafter, the nephew died testate. In his will, he devised the farm to his daughter. Several years later, the man died intestate, survived by two sons. The nephew's daughter immediately claimed ownership of the farm and demanded that the attorney deliver the deed to her.

Must the attorney deliver the deed to the daughter?

A: No, because a gratuitous death escrow is void unless supported by a written contract.
B: No, because the man never placed the deed beyond his control.
C: Yes, because the death of the nephew rendered the gratuitous death escrow irrevocable by the man.
D: Yes, because the deed to the nephew was legally delivered when the man took it to his attorney.

The explanation for the answer is:

Answer B is correct. When the man delivered the deed to his attorney with instructions to deliver it to the nephew on his death, he was attempting to create a valid death escrow. Neither a written nor an oral contract is required for a valid death escrow, since most are gratuitous. To create a valid death escrow, however, the man had to place the deed beyond his control, reserving no power over it once it had been given to the attorney. Because the man instructed the attorney to return the deed to the man if he asked, the man did not place the deed beyond his control, and no death escrow was created. Thus, Answer B is correct.

Answer A is incorrect because a gratuitous death escrow does not need to be supported by a written contract.

Answer C is incorrect because a valid death escrow was never created, and the subsequent death of the nephew is of no consequence.

Answer D is incorrect because the deed was never legally delivered to the nephew. Because the man instructed the attorney to return the deed to the man if he so requested, the man did not place the deed beyond his control, and no death escrow was created.

Question 1449 - Real Property - Ownership

The question was:

A businesswoman owned two adjoining tracts of land, one that was improved with a commercial rental building and another that was vacant and abutted a river.

Twenty years ago, the businesswoman conveyed the vacant tract to a grantee by a warranty deed that the businesswoman signed but the grantee did not. The deed contained a covenant by the grantee as owner of the vacant tract that neither he nor his heirs or assigns would "erect any building" on the vacant tract, in order to preserve the view of the river from the commercial building on the improved tract. The grantee intended to use the vacant tract as a nature preserve. The grantee promptly and properly recorded the deed.

Last year, the businesswoman conveyed the improved tract to a businessman. A month later, the grantee died, devising all of his property, including the vacant land, to his cousin.

Six weeks ago, the cousin began construction of a building on the vacant tract.

The businessman objected and sued to enjoin construction of the building.

Who is likely to prevail?

A: The businessman, because the commercial building was constructed before the cousin began his construction project.
B: The businessman, because the cousin is bound by the covenant made by the grantee.
C: The cousin, because an equitable servitude does not survive the death of the promisor.
D: The cousin, because the grantee did not sign the deed.

The explanation for the answer is:

Answer B is correct. The businesswoman and the grantee created a valid equitable servitude. The promise was in a writing--the deed--that satisfied the statute of frauds. The promise restricting the use of the vacant land touched and concerned the land, placing a burden on the vacant tract and giving a benefit to the improved tract. The writing showed an intent that the promise would be binding on the grantee's heirs and assigns. The grantee recorded the deed. The cousin had constructive notice of the equitable servitude and is bound by it because nothing has occurred that would terminate the equitable servitude. Thus, Answer B is correct. Answer A is incorrect because, although it correctly concludes that the businessman will prevail, it misstates the rationale. It is not relevant whether the commercial building was constructed before or after the other building.

Answer C is incorrect. An equitable servitude will not end on the death of the promisor absent a provision which so provides.

Answer D is incorrect. The grantee did not sign the deed; however, the grantee accepted the deed and recorded it. An equitable servitude may be created by a writing that complies with the statute of frauds and expresses an intention that the servitude exist. The deed to the grantee satisfied the statute of frauds and showed an intention that the grantee's heirs and assigns be bound. The promise restricting the use of the vacant land touched and concerned the land, placing a burden on the vacant tract and giving a benefit to the improved tract. The grantee recorded the deed. The cousin thus had constructive notice of the equitable servitude and is bound by it because nothing has occurred that would terminate the equitable servitude.

Question 1462 - Real Property - Titles

The question was:

Ten years ago, a seller sold land to a buyer, who financed the purchase price with a loan from a bank that was secured by a mortgage on the land. The buyer purchased a title insurance policy running to both the buyer and the bank, showing no liens on the property other than the buyer's mortgage to the bank. Eight years ago, the buyer paid the mortgage in full.

Seven years ago, the buyer sold the land to an investor by a full covenant and warranty deed without exceptions.

Six years ago, the investor gave the land to a donee by a quitclaim deed.

Last year, the donee discovered an outstanding mortgage on the land that predated all of these conveyances. As a result of a title examiner's negligence, this mortgage was not disclosed in the title insurance policy issued to the buyer and the bank.

Following this discovery, the donee successfully sued the buyer to recover the amount of the outstanding mortgage.

If the buyer sues the title insurance company to recover the amount he paid to the donee, is he likely to prevail?

A: No, because the buyer conveyed the land to an investor.
B: No, because the title insurance policy lapsed when the buyer paid off the bank's mortgage.
C: Yes, because the buyer is protected by the title insurance policy even though he no longer owns the land.
D: Yes, because the buyer was successfully sued by a donee and not by a bona fide purchaser for value.

The explanation for the answer is:

Answer C is correct. Although the lender's policy of title insurance ended when the loan was repaid, an owner's policy of title insurance continues to protect the owner if the owner (here, the buyer) is ever successfully sued on a title covenant in a future conveyance. It does not matter that the buyer conveyed the land to the investor. The donee successfully sued the buyer on the title covenant given in the buyer's full warranty deed which deed was without exception to the investor. The buyer can now recover on the owner's policy of title insurance. Thus, Answer C is correct, and Answers A and B are incorrect.

Answer D is incorrect because, although this response correctly concludes that the buyer will prevail against the title insurance company, it misstates the rationale. It does not matter whether the buyer was sued by a donee or a bona fide purchaser for value.

Question 1468 - Real Property - Rights in Land

The question was:

A woman owned a house on a lot abutting a public street. Six months ago, the city validly revised its zoning ordinances and placed the woman's lot and the surrounding lots abutting the public street from the north in a zone limited to residential use; the lots abutting the public street on the south side were zoned for both residential and light business use.

The woman asked the city's zoning appeals board to approve her proposal to operate a court-reporting service from her house. This type of use would be permitted on the south side of the public street and, in fact, one such business has existed there for several years.

The board approved the woman's proposal.

Why?

A: A variance was granted.
B: The doctrine of amortization applied.
C: The doctrine of change of circumstances applied.
D: The woman's use of her house was a nonconforming use.

The explanation for the answer is:

Answer A is correct. A variance permits a waiver from a zoning requirement. A variance will be granted when an owner convinces a zoning appeals board that without the variance the owner would suffer a hardship regarding the use of the land. In this case, the board approved the woman's application to operate a court-reporting service in her house, and thus this jurisdiction allows use variances that permit nonresidential uses in areas that are otherwise zoned residential. Thus, Answer A is correct.

Answer B is incorrect. The doctrine of amortization is a means used to terminate a nonconforming use. A nonconforming use is a use that was in existence at the time of the zoning change, and was allowed at that time, but is not permitted under the new zoning. In this case, at the time of the zoning change the woman was using her house as a residence, and residential use was permitted under the new zoning. Thus, her use was not a nonconforming use at the time of the zoning change.

Answer C is incorrect. The doctrine of change of circumstances is used to terminate an equitable servitude. An equitable servitude is a private restriction regarding the use of land. Zoning, on the other hand, is public land use regulation. As stated above, only a variance permits a waiver from a zoning requirement. Thus, the doctrine of changed circumstances is inapplicable in these circumstances.

Answer D is incorrect. A nonconforming use is a use that was in existence at the time of the zoning change, and was allowed at that time, but is no longer permitted under the new zoning. At the time of the zoning change in this case, the woman was using her house as a residence, and residential use is still permitted after the zoning change. Thus, her use is not a nonconforming use. As explained above, a variance permits a waiver from a zoning requirement after the zoning requirement has been established.

Question 1476 - Real Property - Ownership

The question was:

A woman died testate. In her will, she devised a farm she owned to her husband for life, remainder to her niece. Her will did not specify the duties of the husband and the niece with regard to maintenance and expenses related to the farm. The husband took sole possession of the farm, did not farm the land, and did not rent the land to a third person, although the fair rental value was substantial.

For two years in a row after the woman died, the county assessor sent the tax bills to the niece, but the niece did not pay the bills, because she and the husband could not agree on who should pay them. Finally, the niece paid the taxes to avoid a tax foreclosure sale.

The niece then sued the husband for reimbursement for the two years' worth of property taxes.

There is no applicable statute.

Is the niece likely to prevail?

A: No, because remaindermen are solely responsible for the payment of property taxes.
B: No, because the county assessor sent the bills to the niece.
C: No, because the woman's will was silent on responsibility for payment of property taxes.
D: Yes, because the niece paid an obligation that was the sole responsibility of the husband.

The explanation for the answer is:

Answer D is correct. In the absence of a contrary direction in the document creating the life estate--in this case, the will--it is the duty of the life tenant to pay all general property taxes that accrue during the continuance of the life estate. The only limitation on this duty is that the life tenant has no duty to expend more than the income that can be generated from the land. Because the fair rental value of the farmland was substantial, this limitation does not apply. If the remainderman does pay any property taxes due during the life tenancy, he or she is entitled to a judgment against the life tenant for reimbursement. Thus, Answer D is correct and Answer A is incorrect. Answer B is incorrect because it is not relevant to whom the county assessor sent the tax bills. Answer C is incorrect because the silence in her will as to the responsibility to pay the property taxes triggers the default rule--it is the duty of the life tenant to pay all general property taxes that accrue during the continuance of the life estate.

Question 1487 - Real Property - Ownership

The question was:

Under the terms of his duly probated will, a testator devised his house to his "grandchildren in fee simple" and the residue of his estate to his brother. The testator had had two children, a son and a daughter, but only the daughter survived the testator. At the time of the testator's death, the daughter was 30 years old and had two minor children (grandchildren of the testator) who also survived the testator.

A third grandchild of the testator, who was the child of the testator's predeceased son, had been alive when the testator executed the will, but had predeceased the testator. Under the applicable intestate succession laws, the deceased grandchild's sole heir was his mother.

A statute of the jurisdiction provides as follows: "If a devisee, including a devisee of a class gift, who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will or fails to survive the testator, the issue of such deceased devisee shall take the deceased's share under the will, unless the will expressly provides that this statute shall not apply. For this purpose, words of survivorship, such as 'if he survives me,' are a sufficient expression that the statute shall not apply."

Who now owns the house?

A: The testator's brother.
B: The testator's two surviving grandchildren.
C: The testator's two surviving grandchildren and all other grandchildren who are born to the testator's daughter.
D: The testator's two surviving grandchildren and the deceased grandchild's mother.

The explanation for the answer is:

Answer B is correct. The testator devised his house, which he owned at his death, to his grandchildren as a class gift. The testator was survived by two grandchildren who became the sole surviving members of the class. The deceased grandchild's interest lapsed because the grandchild, though alive at the time of the will execution, died before the testator. The deceased grandchild would qualify under the anti-lapse statute, but he was not survived by any issue who would be substituted for him under the statute. Thus, Answer B is correct and Answer D is incorrect. Answer A is incorrect because the house will pass to the two surviving grandchildren as surviving members of the class and will not fall into the residue of the estate. Answer C is incorrect because, when the class closed, there were two surviving members of the class, who will take. Additional children of the testator's daughter will not take.

Question 1489 - Real Property - Titles

The question was:

Last year, a buyer and a seller entered into a valid contract for the sale of a parcel of real property. The contract contained no contingencies. The seller was killed in a car accident before the parcel was conveyed, but the closing eventually took place with the conveyance by a deed from the personal representative of the seller's estate.

The personal representative of the seller's estate wants to distribute the proceeds of the real property sale. The seller's will was executed many years ago and was duly admitted to probate. Paragraph 5 of his will leaves all of the seller's real property to his son, and Paragraph 6 leaves the residue of the estate to the seller's daughter. No other provisions of the will are pertinent to the question regarding to whom the proceeds of the sale should be distributed.

What will determine who receives the proceeds?

A: Whether Paragraph 5 refers specifically to the parcel of real property that was sold or simply to "all of my real property."
B: Whether the closing date originally specified in the contract was a date before or after the seller's death.
C: Whether the jurisdiction has adopted the doctrine of equitable conversion.
D: Whether the sale was completed in accordance with a court order.

The explanation for the answer is:

Answer C is correct. Many events may occur during the executory time period, which is the time between the contract signing and the closing. If the seller dies during this time period leaving a will that devises the real estate to one person and the personalty to another, and if the contract contained no contingencies or all contingencies had been satisfied at the time of the death, the doctrine of equitable conversion applies. The determination of who will receive the proceeds thus depends on who had equitable title. In this case, the son had only a legal interest in the land at the time of the seller's death, and the daughter had the equitable interest in the proceeds and should receive them. Thus, Answer C is correct.

Answer A is incorrect. It does not matter whether Paragraph 5 refers specifically to the parcel sold or simply to "all of my real property." The seller died during the executory time period, which is the time between the contract signing and the closing. The contract contained no contingencies, and thus the doctrine of equitable conversion applied as of the date of contract signing and determines who is entitled to the proceeds.

Answer B is incorrect because it does not matter whether the closing date was scheduled before or after the seller's death, and answer D is incorrect because it does not matter whether the sale was completed in accordance with a court order or not. If the seller had died after the closing, the proceeds would have passed to the daughter, who received the residue of the estate. As it was, the seller died during the executory time period between the contract signing and the closing. As explained above, the contract contained no contingencies, and thus the doctrine of equitable conversion applied as of the date of contract signing and determines who is entitled to the proceeds.

Question 1496 - Real Property - Rights in Land

The question was:

A man conveyed his house to his wife for life, remainder to his only child, a son by a previous marriage. Thereafter, the man died, devising his entire estate to his son.

The wife later removed a light fixture in the dining room of the house and replaced it with a chandelier that was one of her family heirlooms. She then informed her nephew and her late husband's son that after her death, the chandelier should be removed from the dining room and replaced with the former light fixture, which she had stored in the basement.

The wife died and under her will bequeathed her entire estate to her nephew. She also named the nephew as the personal representative of her estate. After the nephew, in his capacity as personal representative, removed the chandelier and replaced it with the original light fixture shortly after the wife's death, the son sued to have the chandelier reinstalled.

Who will likely prevail?

A: The nephew, because he had the right to remove the chandelier within a reasonable time after the wife's death.
B: The nephew, because of the doctrine of accession.
C: The son, because the chandelier could not be legally removed after the death of the wife.
D: The son, because a personal representative can remove only trade fixtures from real property.

The explanation for the answer is:

Answer A is correct. As the life tenant, the wife had a right to annex a chattel, in this case the chandelier. It was clear that the wife did not intend to make the chandelier a permanent annexation, as evidenced by her discussions with her nephew and the man's son. The wife's personal representative, the nephew, had the right to remove the chandelier within a reasonable time after the termination of the wife's life estate. Thus, Answer A is correct and Answer C is incorrect.

Answer B is incorrect. This response correctly concludes that the nephew, as the personal representative, had the right to remove the chandelier, but it misstates the rationale. The doctrine of accession applies only in situations in which one person annexes chattels to real property owned by another under such circumstances that the law will not permit the chattels' removal. In this case, the wife, the life tenant, annexed the chandelier to her own real property, which she held in a life estate. The nephew, as the personal representative, had the right to remove the chandelier within a reasonable period of time after the wife's death.

Answer D is incorrect. A trade fixture is a fixture installed by a tenant in a trade or business. At the end of the lease term, the tenant typically may remove any trade fixtures that have been installed, provided that substantial damage will not occur as a result of the removal. In this case, the wife was a life tenant in a house who annexed a chattel--the chandelier--in the dining room of that house. It is clear that the wife did not intend to make the annexation permanent, as evidenced by her discussions with her nephew and the son. The nephew, as the personal representative, had the right to remove the chandelier within a reasonable time after the termination of the wife's life estate.

Question 1502 - Real Property - Mortgages

The question was:

A man obtained a bank loan secured by a mortgage on an office building that he owned. After several years, the man conveyed the office building to a woman, who took title subject to the mortgage. The deed to the woman was not recorded. The woman took immediate possession of the building and made the mortgage payments for several years.

Subsequently, the woman stopped making payments on the mortgage loan, and the bank eventually commenced foreclosure proceedings in which the man and the woman were both named parties. At the foreclosure sale, a third party purchased the building for less than the outstanding balance on the mortgage loan. The bank then sought to collect the deficiency from the woman.

Is the bank entitled to collect the deficiency from the woman?

A: No, because the woman did not record the deed from the man.
B: No, because the woman is not personally liable on the loan.
C: Yes, because the woman took immediate possession of the building when she bought it from the man.
D: Yes, because the woman was a party to the foreclosure proceeding.

The explanation for the answer is:

A is incorrect. The woman took title to the office building subject to the mortgage debt, which means that the debt was to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable. Recording the deed would give the bank constructive notice of the transfer but would have no effect on the collection of the deficiency.

B is correct. The woman took title to the office building subject to the mortgage but did not assume the mortgage debt. The debt is to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable.

C is incorrect. The woman took title to the building subject to the mortgage. Her title to the building allowed her to take possession of the building, but her possession has no effect on the payment of any deficiency judgment. Taking title to the building subject to the mortgage means that the debt is to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable.

D is incorrect. Because the woman took title to the building subject to the mortgage debt, she was a necessary party to the foreclosure proceeding. However, the fact that she took title to the building subject to the mortgage means that the debt is to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable.

Question 1502 - Real Property - Mortgages

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A man obtained a bank loan secured by a mortgage on an office building that he owned. After several years, the man conveyed the office building to a woman, who took title subject to the mortgage. The deed to the woman was not recorded. The woman took immediate possession of the building and made the mortgage payments for several years.

Subsequently, the woman stopped making payments on the mortgage loan, and the bank eventually commenced foreclosure proceedings in which the man and the woman were both named parties. At the foreclosure sale, a third party purchased the building for less than the outstanding balance on the mortgage loan. The bank then sought to collect the deficiency from the woman.

Is the bank entitled to collect the deficiency from the woman?

A: No, because the woman did not record the deed from the man.
B: No, because the woman is not personally liable on the loan.
C: Yes, because the woman took immediate possession of the building when she bought it from the man.
D: Yes, because the woman was a party to the foreclosure proceeding.

The explanation for the answer is:

A is incorrect. The woman took title to the office building subject to the mortgage debt, which means that the debt was to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable. Recording the deed would give the bank constructive notice of the transfer but would have no effect on the collection of the deficiency.

B is correct. The woman took title to the office building subject to the mortgage but did not assume the mortgage debt. The debt is to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable.

C is incorrect. The woman took title to the building subject to the mortgage. Her title to the building allowed her to take possession of the building, but her possession has no effect on the payment of any deficiency judgment. Taking title to the building subject to the mortgage means that the debt is to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable.

D is incorrect. Because the woman took title to the building subject to the mortgage debt, she was a necessary party to the foreclosure proceeding. However, the fact that she took title to the building subject to the mortgage means that the debt is to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable.

Question 1502 - Real Property - Mortgages

The question was:

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Subsequently, the woman stopped making payments on the mortgage loan, and the bank eventually commenced foreclosure proceedings in which the man and the woman were both named parties. At the foreclosure sale, a third party purchased the building for less than the outstanding balance on the mortgage loan. The bank then sought to collect the deficiency from the woman.

Is the bank entitled to collect the deficiency from the woman?

A: No, because the woman did not record the deed from the man.
B: No, because the woman is not personally liable on the loan.
C: Yes, because the woman took immediate possession of the building when she bought it from the man.
D: Yes, because the woman was a party to the foreclosure proceeding.

The explanation for the answer is:

A is incorrect. The woman took title to the office building subject to the mortgage debt, which means that the debt was to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable. Recording the deed would give the bank constructive notice of the transfer but would have no effect on the collection of the deficiency.

B is correct. The woman took title to the office building subject to the mortgage but did not assume the mortgage debt. The debt is to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable.

C is incorrect. The woman took title to the building subject to the mortgage. Her title to the building allowed her to take possession of the building, but her possession has no effect on the payment of any deficiency judgment. Taking title to the building subject to the mortgage means that the debt is to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable.

D is incorrect. Because the woman took title to the building subject to the mortgage debt, she was a necessary party to the foreclosure proceeding. However, the fact that she took title to the building subject to the mortgage means that the debt is to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable.

Question 1502 - Real Property - Mortgages

The question was:

A man obtained a bank loan secured by a mortgage on an office building that he owned. After several years, the man conveyed the office building to a woman, who took title subject to the mortgage. The deed to the woman was not recorded. The woman took immediate possession of the building and made the mortgage payments for several years.

Subsequently, the woman stopped making payments on the mortgage loan, and the bank eventually commenced foreclosure proceedings in which the man and the woman were both named parties. At the foreclosure sale, a third party purchased the building for less than the outstanding balance on the mortgage loan. The bank then sought to collect the deficiency from the woman.

Is the bank entitled to collect the deficiency from the woman?

A: No, because the woman did not record the deed from the man.
B: No, because the woman is not personally liable on the loan.
C: Yes, because the woman took immediate possession of the building when she bought it from the man.
D: Yes, because the woman was a party to the foreclosure proceeding.

The explanation for the answer is:

A is incorrect. The woman took title to the office building subject to the mortgage debt, which means that the debt was to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable. Recording the deed would give the bank constructive notice of the transfer but would have no effect on the collection of the deficiency.

B is correct. The woman took title to the office building subject to the mortgage but did not assume the mortgage debt. The debt is to be satisfied out of the building. The building is the principal, and the man, as transferor, is the only party liable for any deficiency. This situation can be contrasted with one in which a buyer expressly assumes the mortgage debt. In that case, the buyer would be primarily liable for any deficiency and the seller, absent a release by the mortgagee, would be secondarily liable.

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Question 1509 - Real Property - Mortgages

The question was:

A credit card company obtained and properly filed a judgment against a man after he failed to pay a $10,000 debt. A statute in the jurisdiction provides as follows: "Any judgment properly filed shall, for 10 years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

Two years later, the man purchased land for $200,000. He made a down payment of $20,000 and borrowed the remaining $180,000 from a bank. The bank loan was secured by a mortgage on the land. Immediately after the closing, the deed to the man was recorded first, and the bank's mortgage was recorded second.

Five months later, the man defaulted on the mortgage loan and the bank initiated judicial foreclosure proceedings. After receiving notice of the proceedings, the credit card company filed a motion to have its judgment lien declared to be the first lien on the land.

Is the credit card company's motion likely to be granted?

A: No, because the bank's mortgage secured a loan used to purchase the land.
B: No, because the man's down payment exceeded the amount of his debt to the credit card company.
C: Yes, because the bank had constructive notice of the judgment lien.
D: Yes, because the bank is a third-party lender and not the seller of the land.

The explanation for the answer is:

A is correct. The bank's mortgage is a purchase-money mortgage, meaning that the funds the bank advanced were used to purchase the land. A purchase-money mortgage executed at the same time as the purchase of the real property encumbered takes precedence over any other claim or lien, including a previously filed judgment lien. Therefore, the bank's purchase-money mortgage takes precedence over the credit card company's judgment lien.

B is incorrect. The relative amounts of the down payment and the credit card debt are irrelevant. The bank's mortgage is a purchase-money mortgage, meaning that the funds the bank advanced were used to purchase the land. A purchase-money mortgage executed at the same time as the purchase of the real property encumbered takes precedence over any other claim or lien, including a previously filed judgment lien.

C is incorrect. It is true that the judgment lien was properly filed and thus provided the bank with constructive notice of the lien. The bank's mortgage, however, is a purchase-money mortgage, meaning that the funds the bank advanced were used to purchase the land. A purchase-money mortgage executed at the same time as the purchase of the real property encumbered takes precedence over any other claim, including a previously filed judgment lien.

D is incorrect. The bank's mortgage is a purchase-money mortgage, meaning that the funds the bank advanced were used to purchase the land. A purchase-money mortgage may be granted by a seller, by a third party, or both. A purchase-money mortgage executed at the same time as the purchase of the real property encumbered takes precedence over any other claim, including a previously filed judgment lien. Therefore, the bank's purchase-money mortgage takes precedence over the credit card company's judgment lien.

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Question 1516 - Real Property - Ownership

The question was:

A husband and wife acquired land as common law joint tenants with right of survivorship. One year later, without his wife's knowledge, the husband executed a will devising the land to his best friend. The husband subsequently died.

Is the wife now the sole owner of the land?

A: No, because a joint tenant has the unilateral right to end a joint tenancy without the consent of the other joint tenant.
B: No, because the wife's interest in the husband's undivided 50% ownership in the land adeemed.
C: Yes, because of the doctrine of after-acquired title.
D: Yes, because the devise to the friend did not sever the joint tenancy.

The explanation for the answer is:

A is incorrect. As a general rule, a joint tenant's interest is freely alienable during his or her lifetime without the consent of the other joint tenant. However, a joint tenant's interest cannot be devised in a will. In this case, on the death of the husband, the wife's interest in the joint tenancy immediately swelled and she became the sole owner of the land as the surviving joint tenant.

B is incorrect. The doctrine of ademption applies only when an individual dies testate and attempts to devise land that the testator no longer owns. Although as a general rule a joint tenant's interest is freely alienable during his or her lifetime without the consent of the other joint tenant, that interest cannot be devised in a will. In this case, on the death of the husband, the wife's interest in the joint tenancy immediately swelled and she became the sole owner of the land as the surviving joint tenant.

C is incorrect. The doctrine of after-acquired title applies when an individual attempts to convey title (usually by warranty deed) at a time when the individual does not have title to the land but later acquires title to the land. Although as a general rule a joint tenant's interest is freely alienable during his or her lifetime without the consent of the other joint tenant, that interest cannot be devised in a will. In this case, on the death of the husband, the wife's interest in the joint tenancy immediately swelled and she became the sole owner of the land as the surviving joint tenant.

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Question 1519 - Real Property - Ownership

The question was:

A landlord leased a building to a tenant for a 10-year term. Two years after the term began, the tenant subleased the building to a sublessee for a 5-year term. Under the terms of the sublease, the sublessee agreed to make monthly rent payments to the tenant.

Although the sublessee made timely rent payments to the tenant, the tenant did not forward four of those payments to the landlord. The tenant has left the jurisdiction and cannot be found. The landlord has sued the sublessee for the unpaid rent.

There is no applicable statute.

If the court rules that the sublessee is not liable to the landlord for the unpaid rent, what will be the most likely reason?

A: A sublessee is responsible to the landlord only as a surety for unpaid rent owed by the tenant.
B: The sublease constitutes a novation of the original lease.
C: The sublessee is not in privity of estate or contract with the landlord.
D: The sublessee's rent payments to the tenant fully discharged the sublessee's obligation to pay rent to the landlord.

The explanation for the answer is:

A is incorrect. In a sublease, the tenant transfers a right of possession for a time shorter than the balance of the leasehold. Therefore, the sublessee and the tenant are in privity of estate with each other, but only the tenant remains in privity of estate with the landlord. There also is no privity of contract between the sublessee and the landlord, because the sublessee made no promise, either to the landlord or to the tenant, to pay rent to the landlord. Lacking privity, the sublessee is not liable to the landlord for the rent and also is not a surety for the tenant.

B is incorrect. A novation occurs when a tenant seeks to avoid future liability for rent after an assignment and the landlord agrees to release the tenant from such liability. An assignment occurs when the tenant transfers the entire period of time remaining on the lease agreement. Here, the tenant only transferred a portion of the remaining time on the lease agreement, and the tenant did not seek a release or novation from the landlord.

C is correct. In a sublease, the tenant transfers a right of possession for a time shorter than the balance of the leasehold. Therefore, the sublessee and the tenant are in privity of estate with each other, but only the tenant remains in privity of estate with the landlord. There also is no privity of contract between the sublessee and the landlord, because the sublessee made no promise, either to the landlord or to the tenant, to pay rent to the landlord. Lacking privity, the sublessee is not liable to the landlord for the rent. Although privity may not be required under an equitable servitude theory, a finding for the sublessee would mean that the court did not use such a theory.

D is incorrect. The sublessee had no obligation to pay rent to the landlord. In a sublease, the tenant transfers a right of possession for a time shorter than the balance of the leasehold. Therefore, the sublessee and the tenant are in privity of estate with each other, but only the tenant remains in privity of estate with the landlord. There also is no privity of contract between the sublessee and the landlord, because the sublessee made no promise, either to the landlord or to the tenant, to pay rent to the landlord. Lacking privity, a sublessee is not liable to the landlord for the rent. Although privity may not be required under an equitable servitude theory, a finding for the sublessee would mean that the court did not use such a theory.

Question 1519 - Real Property - Ownership

The question was:

A landlord leased a building to a tenant for a 10-year term. Two years after the term began, the tenant subleased the building to a sublessee for a 5-year term. Under the terms of the sublease, the sublessee agreed to make monthly rent payments to the tenant.

Although the sublessee made timely rent payments to the tenant, the tenant did not forward four of those payments to the landlord. The tenant has left the jurisdiction and cannot be found. The landlord has sued the sublessee for the unpaid rent.

There is no applicable statute.

If the court rules that the sublessee is not liable to the landlord for the unpaid rent, what will be the most likely reason?

A: A sublessee is responsible to the landlord only as a surety for unpaid rent owed by the tenant.
B: The sublease constitutes a novation of the original lease.
C: The sublessee is not in privity of estate or contract with the landlord.
D: The sublessee's rent payments to the tenant fully discharged the sublessee's obligation to pay rent to the landlord.

The explanation for the answer is:

A is incorrect. In a sublease, the tenant transfers a right of possession for a time shorter than the balance of the leasehold. Therefore, the sublessee and the tenant are in privity of estate with each other, but only the tenant remains in privity of estate with the landlord. There also is no privity of contract between the sublessee and the landlord, because the sublessee made no promise, either to the landlord or to the tenant, to pay rent to the landlord. Lacking privity, the sublessee is not liable to the landlord for the rent and also is not a surety for the tenant.

B is incorrect. A novation occurs when a tenant seeks to avoid future liability for rent after an assignment and the landlord agrees to release the tenant from such liability. An assignment occurs when the tenant transfers the entire period of time remaining on the lease agreement. Here, the tenant only transferred a portion of the remaining time on the lease agreement, and the tenant did not seek a release or novation from the landlord.

C is correct. In a sublease, the tenant transfers a right of possession for a time shorter than the balance of the leasehold. Therefore, the sublessee and the tenant are in privity of estate with each other, but only the tenant remains in privity of estate with the landlord. There also is no privity of contract between the sublessee and the landlord, because the sublessee made no promise, either to the landlord or to the tenant, to pay rent to the landlord. Lacking privity, the sublessee is not liable to the landlord for the rent. Although privity may not be required under an equitable servitude theory, a finding for the sublessee would mean that the court did not use such a theory.

D is incorrect. The sublessee had no obligation to pay rent to the landlord. In a sublease, the tenant transfers a right of possession for a time shorter than the balance of the leasehold. Therefore, the sublessee and the tenant are in privity of estate with each other, but only the tenant remains in privity of estate with the landlord. There also is no privity of contract between the sublessee and the landlord, because the sublessee made no promise, either to the landlord or to the tenant, to pay rent to the landlord. Lacking privity, a sublessee is not liable to the landlord for the rent. Although privity may not be required under an equitable servitude theory, a finding for the sublessee would mean that the court did not use such a theory.

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B is incorrect. A novation occurs when a tenant seeks to avoid future liability for rent after an assignment and the landlord agrees to release the tenant from such liability. An assignment occurs when the tenant transfers the entire period of time remaining on the lease agreement. Here, the tenant only transferred a portion of the remaining time on the lease agreement, and the tenant did not seek a release or novation from the landlord.

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C is correct. In a sublease, the tenant transfers a right of possession for a time shorter than the balance of the leasehold. Therefore, the sublessee and the tenant are in privity of estate with each other, but only the tenant remains in privity of estate with the landlord. There also is no privity of contract between the sublessee and the landlord, because the sublessee made no promise, either to the landlord or to the tenant, to pay rent to the landlord. Lacking privity, the sublessee is not liable to the landlord for the rent. Although privity may not be required under an equitable servitude theory, a finding for the sublessee would mean that the court did not use such a theory.

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B is incorrect. A novation occurs when a tenant seeks to avoid future liability for rent after an assignment and the landlord agrees to release the tenant from such liability. An assignment occurs when the tenant transfers the entire period of time remaining on the lease agreement. Here, the tenant only transferred a portion of the remaining time on the lease agreement, and the tenant did not seek a release or novation from the landlord.

C is correct. In a sublease, the tenant transfers a right of possession for a time shorter than the balance of the leasehold. Therefore, the sublessee and the tenant are in privity of estate with each other, but only the tenant remains in privity of estate with the landlord. There also is no privity of contract between the sublessee and the landlord, because the sublessee made no promise, either to the landlord or to the tenant, to pay rent to the landlord. Lacking privity, the sublessee is not liable to the landlord for the rent. Although privity may not be required under an equitable servitude theory, a finding for the sublessee would mean that the court did not use such a theory.

D is incorrect. The sublessee had no obligation to pay rent to the landlord. In a sublease, the tenant transfers a right of possession for a time shorter than the balance of the leasehold. Therefore, the sublessee and the tenant are in privity of estate with each other, but only the tenant remains in privity of estate with the landlord. There also is no privity of contract between the sublessee and the landlord, because the sublessee made no promise, either to the landlord or to the tenant, to pay rent to the landlord. Lacking privity, a sublessee is not liable to the landlord for the rent. Although privity may not be required under an equitable servitude theory, a finding for the sublessee would mean that the court did not use such a theory.

Question 1523 - Real Property - Titles

The question was:

A woman who owned a house executed a deed purporting to convey the house to her son and his wife. The language of the deed was sufficient to create a common law joint tenancy with right of survivorship, which is unmodified by statute in the jurisdiction. The woman mailed the deed to the son with a letter saying: "Because I intend you and your wife to have my house after my death, I am enclosing a deed to the house. However, I intend to live in the house for the rest of my life, so don't record the deed until I die. The deed will be effective at my death."

The son put the deed in his desk. The wife discovered the deed and recorded it without the son's knowledge. Subsequently, the son and the wife separated, and the wife, without telling anyone, conveyed her interest in the house to a friend who immediately reconveyed it to the wife.

The woman learned that the son and the wife had separated and also learned what had happened to the deed to the house. The woman then brought an appropriate action against the son and the wife to obtain a declaration that the woman was still the owner of the house and an order canceling of record the woman's deed and the subsequent deeds.

If the court determines that the woman owns the house in fee simple, what will be the likely explanation?

A: The deed was not delivered.
B: The wife's conduct entitles the woman to equitable relief.
C: The woman expressly reserved a life estate.
D: The woman received no consideration for her deed.

The explanation for the answer is:

A is correct. To be valid, a deed must be properly executed and delivered. Delivery is a question of the grantor's intent. In this case, the woman did not intend the deed to be effective until her death. An intent to have a transfer be effective at the grantor's death is valid in a will but not in a deed unless the deed expressly reserves a life estate, which this deed did not do. The woman remained in possession of the house and intended to retain title to the house until her death. The deed was not delivered, so she owns the house in fee simple.

B is incorrect. The wife's conduct may have been inappropriate, but it is not relevant to whether the woman properly delivered the deed to the son and the wife. To be valid, a deed must be properly executed and delivered. Delivery is a question of the grantor's intent. In this case, the woman did not intend the deed to be effective until her death. An intent to have a transfer be effective at the grantor's death is valid in a will but not in a deed unless the deed expressly reserves a life estate, which this deed did not do. The woman remained in possession of the house and intended to retain title to the house until her death. The deed was not delivered, so she owns the house in fee simple.

C is incorrect. The woman did not expressly reserve a life estate, and she remained in possession of the house. To be valid, a deed must be properly executed and delivered. Delivery is a question of the grantor's intent. In this case, the woman did not intend the deed to be effective until her death. An intent to have a transfer be effective at the grantor's death is valid in a will but not in a deed unless the deed expressly reserves a life estate, which this deed did not do. The woman remained in possession of the house and intended to retain title to the house until her death. The deed was not delivered, so she owns the house in fee simple.

D is incorrect. A grantor may convey property for no consideration. To be valid, however, a deed must be properly executed and delivered. Delivery is a question of the grantor's intent. In this case, the woman did not intend the deed to be effective until her death. An intent to have a transfer be effective at the grantor's death is valid in a will but not in a deed unless the deed expressly reserves a life estate, which this deed did not do. The woman remained in possession of the house, and the deed was not delivered, so she owns the house in fee simple.

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The son put the deed in his desk. The wife discovered the deed and recorded it without the son's knowledge. Subsequently, the son and the wife separated, and the wife, without telling anyone, conveyed her interest in the house to a friend who immediately reconveyed it to the wife.

The woman learned that the son and the wife had separated and also learned what had happened to the deed to the house. The woman then brought an appropriate action against the son and the wife to obtain a declaration that the woman was still the owner of the house and an order canceling of record the woman's deed and the subsequent deeds.

If the court determines that the woman owns the house in fee simple, what will be the likely explanation?

A: The deed was not delivered.
B: The wife's conduct entitles the woman to equitable relief.
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D: The woman received no consideration for her deed.

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B is incorrect. The wife's conduct may have been inappropriate, but it is not relevant to whether the woman properly delivered the deed to the son and the wife. To be valid, a deed must be properly executed and delivered. Delivery is a question of the grantor's intent. In this case, the woman did not intend the deed to be effective until her death. An intent to have a transfer be effective at the grantor's death is valid in a will but not in a deed unless the deed expressly reserves a life estate, which this deed did not do. The woman remained in possession of the house and intended to retain title to the house until her death. The deed was not delivered, so she owns the house in fee simple.

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D is incorrect. A grantor may convey property for no consideration. To be valid, however, a deed must be properly executed and delivered. Delivery is a question of the grantor's intent. In this case, the woman did not intend the deed to be effective until her death. An intent to have a transfer be effective at the grantor's death is valid in a will but not in a deed unless the deed expressly reserves a life estate, which this deed did not do. The woman remained in possession of the house, and the deed was not delivered, so she owns the house in fee simple.

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The son put the deed in his desk. The wife discovered the deed and recorded it without the son's knowledge. Subsequently, the son and the wife separated, and the wife, without telling anyone, conveyed her interest in the house to a friend who immediately reconveyed it to the wife.

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A is correct. To be valid, a deed must be properly executed and delivered. Delivery is a question of the grantor's intent. In this case, the woman did not intend the deed to be effective until her death. An intent to have a transfer be effective at the grantor's death is valid in a will but not in a deed unless the deed expressly reserves a life estate, which this deed did not do. The woman remained in possession of the house and intended to retain title to the house until her death. The deed was not delivered, so she owns the house in fee simple.

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C is incorrect. The woman did not expressly reserve a life estate, and she remained in possession of the house. To be valid, a deed must be properly executed and delivered. Delivery is a question of the grantor's intent. In this case, the woman did not intend the deed to be effective until her death. An intent to have a transfer be effective at the grantor's death is valid in a will but not in a deed unless the deed expressly reserves a life estate, which this deed did not do. The woman remained in possession of the house and intended to retain title to the house until her death. The deed was not delivered, so she owns the house in fee simple.

D is incorrect. A grantor may convey property for no consideration. To be valid, however, a deed must be properly executed and delivered. Delivery is a question of the grantor's intent. In this case, the woman did not intend the deed to be effective until her death. An intent to have a transfer be effective at the grantor's death is valid in a will but not in a deed unless the deed expressly reserves a life estate, which this deed did not do. The woman remained in possession of the house, and the deed was not delivered, so she owns the house in fee simple.

Question 1527 - Real Property - Mortgages

The question was:

A woman borrowed $100,000 from a bank and executed a promissory note to the bank in that amount. As security for repayment of the loan, the woman's brother gave the bank a mortgage on a tract of land solely owned by him. The brother did not sign the promissory note.

The woman subsequently defaulted on the loan, and after acceleration, the bank instituted foreclosure proceedings on the brother's land. The brother filed a timely objection to the foreclosure.

Will the bank succeed in foreclosing on the tract of land?

A: No, because the bank has an equitable mortgage rather than a legal mortgage.
B: No, because a mortgage from the brother is invalid without a mortgage debt owed by him.
C: Yes, because the bank has a valid mortgage.
D: Yes, because the bank is a surety for the brother's mortgage.

The explanation for the answer is:

A is incorrect. A mortgage is security for the performance of an act. The performance may be by the mortgagor or by some other person. Therefore, the mortgage granted by the brother to secure the debt of the woman is valid, and the bank may foreclose on it.

B is incorrect. A mortgage is security for the performance of an act. The performance may be by the mortgagor or by some other person. Therefore, the mortgage granted by the brother to secure the debt of the woman is valid, and the bank may foreclose on it.

C is correct. A mortgage is security for the performance of an act. The performance may be by the mortgagor or by some other person. The mortgage granted by the brother to secure the debt of the woman is valid even though the woman also has personal liability on the debt.

D is incorrect. The bank is the mortgagee under the mortgage and not a surety. The bank may foreclose on the mortgage, however, because the mortgage is valid and the debt is in default. A mortgage is security for the performance of an act. The performance may be by the mortgagor or by some other person.

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Question 1533 - Real Property - Titles

The question was:

A mother executed a will devising vacant land to her son. The mother showed the will to her son.

Thereafter, the son purported to convey the land to a friend by a warranty deed that contained no exceptions. The friend paid value for the land and promptly recorded the deed without having first conducted any title search. The friend never took possession of the land.

The mother later died, and the will devising the land to her son was duly admitted to probate.

Thereafter, the friend conducted a title search for the land and asked the son for a new deed. The son refused, because the value of the land had doubled, but he offered to refund the purchase price to the friend.

The friend has sued to quiet title to the land.

Is the friend likely to prevail?

A: No, because the friend failed to conduct a title search before purchasing the land.
B: No, because the son had no interest in the land at the time of conveyance.
C: Yes, because of the doctrine of estoppel by deed.
D: Yes, because the deed was recorded.

The explanation for the answer is:

A is incorrect. A buyer may want to search the title before purchasing land to determine if title is as called for in the contract, but such a search is not required. The doctrine of estoppel by deed (sometimes referred to as after-acquired title) provides that even if the grantor has no title to the land at the time the deed is delivered, title automatically passes to the grantee when title is so acquired, provided that the grantor asserts the quality of title conveyed in the deed. In this case, the son conveyed to the friend by a warranty deed with no exceptions.

B is incorrect. It is true that the son had no interest in the land at the time of conveyance. The doctrine of estoppel by deed (sometimes referred to as after-acquired title), however, provides that in such a case title automatically passes to the grantee when the title is so acquired, provided that the grantor asserts the quality of title conveyed in the deed. In this case, the son conveyed to the friend by a warranty deed with no exceptions.

C is correct. The doctrine of estoppel by deed (sometimes referred to as after-acquired title) provides that even if the grantor has no title to the land at the time the deed is delivered, the title automatically passes to the grantee when title is so acquired, provided that the grantor asserts the quality of title conveyed in the deed. In this case, the son conveyed to the friend by a warranty deed with no exceptions.

D is incorrect. Recording has no effect on title in this case. The doctrine of estoppel by deed (sometimes referred to as after-acquired title) provides that even if the grantor has no title to the land at the time the deed is delivered, the title automatically passes to the grantee when title is so acquired, provided that the grantor asserts the quality of title conveyed in the deed. In this case, the son conveyed to the friend by a warranty deed with no exceptions. It is irrelevant to the doctrine of estoppel by deed whether the deed was recorded or not.

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Thereafter, the son purported to convey the land to a friend by a warranty deed that contained no exceptions. The friend paid value for the land and promptly recorded the deed without having first conducted any title search. The friend never took possession of the land.

The mother later died, and the will devising the land to her son was duly admitted to probate.

Thereafter, the friend conducted a title search for the land and asked the son for a new deed. The son refused, because the value of the land had doubled, but he offered to refund the purchase price to the friend.

The friend has sued to quiet title to the land.

Is the friend likely to prevail?

A: No, because the friend failed to conduct a title search before purchasing the land.
B: No, because the son had no interest in the land at the time of conveyance.
C: Yes, because of the doctrine of estoppel by deed.
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The mother later died, and the will devising the land to her son was duly admitted to probate.

Thereafter, the friend conducted a title search for the land and asked the son for a new deed. The son refused, because the value of the land had doubled, but he offered to refund the purchase price to the friend.

The friend has sued to quiet title to the land.

Is the friend likely to prevail?

A: No, because the friend failed to conduct a title search before purchasing the land.
B: No, because the son had no interest in the land at the time of conveyance.
C: Yes, because of the doctrine of estoppel by deed.
D: Yes, because the deed was recorded.

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B is incorrect. It is true that the son had no interest in the land at the time of conveyance. The doctrine of estoppel by deed (sometimes referred to as after-acquired title), however, provides that in such a case title automatically passes to the grantee when the title is so acquired, provided that the grantor asserts the quality of title conveyed in the deed. In this case, the son conveyed to the friend by a warranty deed with no exceptions.

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D is incorrect. Recording has no effect on title in this case. The doctrine of estoppel by deed (sometimes referred to as after-acquired title) provides that even if the grantor has no title to the land at the time the deed is delivered, the title automatically passes to the grantee when title is so acquired, provided that the grantor asserts the quality of title conveyed in the deed. In this case, the son conveyed to the friend by a warranty deed with no exceptions. It is irrelevant to the doctrine of estoppel by deed whether the deed was recorded or not.

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The mother later died, and the will devising the land to her son was duly admitted to probate.

Thereafter, the friend conducted a title search for the land and asked the son for a new deed. The son refused, because the value of the land had doubled, but he offered to refund the purchase price to the friend.

The friend has sued to quiet title to the land.

Is the friend likely to prevail?

A: No, because the friend failed to conduct a title search before purchasing the land.
B: No, because the son had no interest in the land at the time of conveyance.
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Question 1543 - Real Property - Contract

The question was:

A woman inherited a house from a distant relative. The woman had never visited the house, which was located in another state, and did not want to own it. Upon learning this, a man who lived next door to the house called the woman and asked to buy the house. The woman agreed, provided that the house was sold "as is." The man agreed, and the woman conveyed the house to the man by a warranty deed.

The man had purchased the house for investment purposes, intending to rent it out while continuing to live next door. After the sale, the man started to renovate the house and discovered serious termite damage. The man sued the woman for breach of contract.

There are no applicable statutes.

How should the court rule?

A: For the woman, because the man planned to change the use of the house for investment purposes.
B: For the woman, because she sold the house "as is."
C: For the man, because of the doctrine of caveat emptor.
D: For the man, because he received a warranty deed.

The explanation for the answer is:

A is incorrect. The man's proposed change of use was not known to the woman, nor was it stated in the contract. His planned change to the use of the house is irrelevant to the outcome of the case. The woman should prevail, but it is because she sold the house "as is."

B is correct. A seller may disclaim any duty to disclose defects if the disclaimer is sufficiently clear and specific. In this case, the contract specifically noted that the house was being sold "as is." The woman made no misrepresentations regarding the condition of the house. There are no statutes that might require an owner-occupier to disclose known defects, and in any case the woman inherited the house and had never visited or lived in it. In addition, this is not the sale of a new house by a builder/seller, which may impose a warranty of habitability.

C is incorrect. The doctrine of caveat emptor states that the buyer accepts the property in its current condition. Therefore, the caveat emptor doctrine would not protect the man as the buyer. In fact, a seller may disclaim any duty to disclose defects if the disclaimer is sufficiently clear and specific. In this case, the contract specifically noted that the house was being sold "as is," and therefore the woman should prevail.

D is incorrect. A warranty deed provides remedies for breaches of title matters. Termite damage affects the physical quality of the property, not title to the property. A seller may disclaim any duty to disclose physical defects if the disclaimer is sufficiently clear and specific. In this case, the contract specifically noted that the house was being sold "as is," and therefore the woman should prevail.

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Question 1543 - Real Property - Contract

The question was:

A woman inherited a house from a distant relative. The woman had never visited the house, which was located in another state, and did not want to own it. Upon learning this, a man who lived next door to the house called the woman and asked to buy the house. The woman agreed, provided that the house was sold "as is." The man agreed, and the woman conveyed the house to the man by a warranty deed.

The man had purchased the house for investment purposes, intending to rent it out while continuing to live next door. After the sale, the man started to renovate the house and discovered serious termite damage. The man sued the woman for breach of contract.

There are no applicable statutes.

How should the court rule?

A: For the woman, because the man planned to change the use of the house for investment purposes.
B: For the woman, because she sold the house "as is."
C: For the man, because of the doctrine of caveat emptor.
D: For the man, because he received a warranty deed.

The explanation for the answer is:

A is incorrect. The man's proposed change of use was not known to the woman, nor was it stated in the contract. His planned change to the use of the house is irrelevant to the outcome of the case. The woman should prevail, but it is because she sold the house "as is."

B is correct. A seller may disclaim any duty to disclose defects if the disclaimer is sufficiently clear and specific. In this case, the contract specifically noted that the house was being sold "as is." The woman made no misrepresentations regarding the condition of the house. There are no statutes that might require an owner-occupier to disclose known defects, and in any case the woman inherited the house and had never visited or lived in it. In addition, this is not the sale of a new house by a builder/seller, which may impose a warranty of habitability.

C is incorrect. The doctrine of caveat emptor states that the buyer accepts the property in its current condition. Therefore, the caveat emptor doctrine would not protect the man as the buyer. In fact, a seller may disclaim any duty to disclose defects if the disclaimer is sufficiently clear and specific. In this case, the contract specifically noted that the house was being sold "as is," and therefore the woman should prevail.

D is incorrect. A warranty deed provides remedies for breaches of title matters. Termite damage affects the physical quality of the property, not title to the property. A seller may disclaim any duty to disclose physical defects if the disclaimer is sufficiently clear and specific. In this case, the contract specifically noted that the house was being sold "as is," and therefore the woman should prevail.

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Question 1546 - Real Property - Rights in Land

The question was:

A man owned a large tract of land. The eastern portion of the land was undeveloped and unused. A farmer owned a farm, the western border of which was along the eastern border of the man's land. The two tracts of land had never been in common ownership.

Five years ago, the farmer asked the man for permission to use a designated two acres of the eastern portion of the man's land to enlarge her farm's irrigation facilities. The man orally gave his permission for such use. Since then, the farmer has invested substantial amounts of money and effort each year to develop and maintain the irrigation facilities within the two-acre parcel. The man has been fully aware of the farmer's actions. Nothing regarding this matter was ever reduced to writing.

Last year, the man gave the entire tract of land as a gift to his nephew. The deed of gift made no reference to the farmer or the two-acre parcel. When the nephew had the land surveyed and discovered the facts, he notified the farmer in writing, "Your license to use the two-acre parcel has been terminated." The notice instructed the farmer to remove her facilities from the two-acre parcel immediately. The farmer refused the nephew's demand.

In an appropriate action between the nephew and the farmer to determine whether the farmer had a right to continue to use the two-acre parcel, the court ruled in favor of the farmer.

What is the most likely reason for the court's ruling?

A: The investments and efforts by the farmer in reliance on the license estop the man, and now the nephew as the man's donee, from terminating the license.
B: The nephew is merely a donee.
C: The farmer has acquired an easement based on prior use.
D: The farmer received a license coupled with an interest.

The explanation for the answer is:

A is correct. In most jurisdictions, the farmer may acquire the unconditional right to use the land following the oral license, provided that the farmer expended money and labor in reliance on the license. The farmer has acquired what is known as an irrevocable license or an equitable easement.

B is incorrect. It does not matter if the nephew acquired title to the property as a donee or as a purchaser. The farmer, by her expenditure of labor and money in reliance on the oral license, has acquired an irrevocable license (also known as an equitable easement).

C is incorrect. The two parcels of land have never been in common ownership and therefore an easement based on prior use cannot be implied. The farmer, by her expenditure of labor and money in reliance on the oral license, has acquired an irrevocable license (also known as an equitable easement).

D is incorrect. The license granted to the farmer was not a license coupled with an interest. A license coupled with an interest permits a person who owns personal property on the land of another to enter the land to retrieve the personal property. The farmer, by her expenditure of labor and money in reliance on the oral license, has acquired an irrevocable license (also known as an equitable easement).

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In an appropriate action between the nephew and the farmer to determine whether the farmer had a right to continue to use the two-acre parcel, the court ruled in favor of the farmer.

What is the most likely reason for the court's ruling?

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Question 1552 - Real Property - Titles

The question was:

Two friends planned to incorporate a business together and agreed that they would own all of the corporation's stock in equal proportion.

A businesswoman conveyed land by a warranty deed to "the corporation and its successors and assigns." The deed was recorded.

Thereafter, the friends had a disagreement. No papers were ever filed to incorporate the business.

There is no applicable statute.

Who owns the land?

A: The businesswoman, because the deed was a warranty deed.
B: The businesswoman, because the deed was void.
C: The two friends as tenants in common, because they intended to own the corporation's stock in equal proportion.
D: The two friends as tenants in common, because they were the intended sole shareholders.

The explanation for the answer is:

A is incorrect. The businesswoman owns the land, but she does so because the deed was void. To be valid, a deed must be properly executed and delivered. A deed to a nonexistent grantee, such as a corporation that has not yet been legally formed, is void. It does not matter whether the deed is a warranty, quitclaim, or special warranty deed. At the time the businesswoman attempted to convey the land to the corporation, the corporation had not yet been legally formed, so the deed was void.

B is correct. To be valid, a deed must be properly executed and delivered. A deed to a nonexistent grantee, such as a corporation that has not yet been legally formed, is void. At the time the businesswoman attempted to convey the land to the corporation, the corporation had not yet been legally formed, so the deed was void.

C is incorrect. To be valid, a deed must be properly executed and delivered. A deed to a nonexistent grantee, such as a corporation that has not yet been legally formed, is void and thus conveys no title. It is irrelevant that the two friends intended to own the corporation's stock in equal proportion.

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Question 1554 - Real Property - Contract

The question was:

A landlord leased a building to a tenant for a term of six years. The lease complied with the statute of frauds and was not recorded. During the lease term, the tenant sent an email to the landlord that stated: "I hereby offer to purchase for $250,000 the building that I am now occupying under a six-year lease with you." The tenant's name was placed below the word "signed" on the message.

In response, the landlord emailed the tenant: "That's fine. We'll close in 60 days." The landlord's name was placed below the word "signed" on the reply message.

Sixty days later, the landlord refused to tender the deed to the building when the tenant tendered the $250,000 purchase price. The tenant has sued for specific performance.

Who is likely to prevail?

A: The landlord, because formation of an enforceable contract to convey the building could not occur until after the lease term expired.
B: The landlord, because the landlord's email response did not contain a sufficient signature under the statute of frauds.
C: The tenant, because the email messages constitute an insufficient attornment of the lease.
D: The tenant, because the email messages constitute a sufficient memorandum under the statute of frauds.

The explanation for the answer is:

A is incorrect. A contract to convey the building could be made during the lease term or thereafter. The email exchange satisfied the statute of frauds, the contract was valid, and the tenant is entitled to specific performance.

B is incorrect. The statute of frauds does require a signature by the party against whom enforcement is sought. However, courts are liberal regarding the nature of a signature; it need only reflect an intent to authenticate the writing. Both the tenant's and the landlord's names were placed below the word "signed," which adequately reflected their desire to be bound. The other requirements of the statute of frauds were also met: the writings identified the parties and the property, expressed an intent to buy and sell, and contained a price term.

C is incorrect. Attornment is not an issue in this case, because it is the tenant who wants to purchase the property. The tenant is likely to prevail, but it is because there was a valid contract of sale. The exchange of emails satisfies the statute of frauds, because the writings identified the parties and the property, expressed an intent to buy and sell, and contained a price term and adequate signatures.

D is correct. The statute of frauds requires a contract for the sale of land to identify the parties, contain a description of the land, evidence an intent to buy and sell, recite (usually) a price term, and be signed by the party against whom enforcement is sought. The email messages here fulfill those requirements. Courts are liberal regarding the nature of a signature; it need only reflect an intent to authenticate the writing. Both the tenant's and the landlord's names were placed below the word "signed," which adequately reflected their desire to be bound.

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D: The tenant, because the email messages constitute a sufficient memorandum under the statute of frauds.

The explanation for the answer is:

A is incorrect. A contract to convey the building could be made during the lease term or thereafter. The email exchange satisfied the statute of frauds, the contract was valid, and the tenant is entitled to specific performance.

B is incorrect. The statute of frauds does require a signature by the party against whom enforcement is sought. However, courts are liberal regarding the nature of a signature; it need only reflect an intent to authenticate the writing. Both the tenant's and the landlord's names were placed below the word "signed," which adequately reflected their desire to be bound. The other requirements of the statute of frauds were also met: the writings identified the parties and the property, expressed an intent to buy and sell, and contained a price term.

C is incorrect. Attornment is not an issue in this case, because it is the tenant who wants to purchase the property. The tenant is likely to prevail, but it is because there was a valid contract of sale. The exchange of emails satisfies the statute of frauds, because the writings identified the parties and the property, expressed an intent to buy and sell, and contained a price term and adequate signatures.

D is correct. The statute of frauds requires a contract for the sale of land to identify the parties, contain a description of the land, evidence an intent to buy and sell, recite (usually) a price term, and be signed by the party against whom enforcement is sought. The email messages here fulfill those requirements. Courts are liberal regarding the nature of a signature; it need only reflect an intent to authenticate the writing. Both the tenant's and the landlord's names were placed below the word "signed," which adequately reflected their desire to be bound.

Question 1554 - Real Property - Contract

The question was:

A landlord leased a building to a tenant for a term of six years. The lease complied with the statute of frauds and was not recorded. During the lease term, the tenant sent an email to the landlord that stated: "I hereby offer to purchase for $250,000 the building that I am now occupying under a six-year lease with you." The tenant's name was placed below the word "signed" on the message.

In response, the landlord emailed the tenant: "That's fine. We'll close in 60 days." The landlord's name was placed below the word "signed" on the reply message.

Sixty days later, the landlord refused to tender the deed to the building when the tenant tendered the $250,000 purchase price. The tenant has sued for specific performance.

Who is likely to prevail?

A: The landlord, because formation of an enforceable contract to convey the building could not occur until after the lease term expired.
B: The landlord, because the landlord's email response did not contain a sufficient signature under the statute of frauds.
C: The tenant, because the email messages constitute an insufficient attornment of the lease.
D: The tenant, because the email messages constitute a sufficient memorandum under the statute of frauds.

The explanation for the answer is:

A is incorrect. A contract to convey the building could be made during the lease term or thereafter. The email exchange satisfied the statute of frauds, the contract was valid, and the tenant is entitled to specific performance.

B is incorrect. The statute of frauds does require a signature by the party against whom enforcement is sought. However, courts are liberal regarding the nature of a signature; it need only reflect an intent to authenticate the writing. Both the tenant's and the landlord's names were placed below the word "signed," which adequately reflected their desire to be bound. The other requirements of the statute of frauds were also met: the writings identified the parties and the property, expressed an intent to buy and sell, and contained a price term.

C is incorrect. Attornment is not an issue in this case, because it is the tenant who wants to purchase the property. The tenant is likely to prevail, but it is because there was a valid contract of sale. The exchange of emails satisfies the statute of frauds, because the writings identified the parties and the property, expressed an intent to buy and sell, and contained a price term and adequate signatures.

D is correct. The statute of frauds requires a contract for the sale of land to identify the parties, contain a description of the land, evidence an intent to buy and sell, recite (usually) a price term, and be signed by the party against whom enforcement is sought. The email messages here fulfill those requirements. Courts are liberal regarding the nature of a signature; it need only reflect an intent to authenticate the writing. Both the tenant's and the landlord's names were placed below the word "signed," which adequately reflected their desire to be bound.

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Who is likely to prevail?

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B: The landlord, because the landlord's email response did not contain a sufficient signature under the statute of frauds.
C: The tenant, because the email messages constitute an insufficient attornment of the lease.
D: The tenant, because the email messages constitute a sufficient memorandum under the statute of frauds.

The explanation for the answer is:

A is incorrect. A contract to convey the building could be made during the lease term or thereafter. The email exchange satisfied the statute of frauds, the contract was valid, and the tenant is entitled to specific performance.

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C is incorrect. Attornment is not an issue in this case, because it is the tenant who wants to purchase the property. The tenant is likely to prevail, but it is because there was a valid contract of sale. The exchange of emails satisfies the statute of frauds, because the writings identified the parties and the property, expressed an intent to buy and sell, and contained a price term and adequate signatures.

D is correct. The statute of frauds requires a contract for the sale of land to identify the parties, contain a description of the land, evidence an intent to buy and sell, recite (usually) a price term, and be signed by the party against whom enforcement is sought. The email messages here fulfill those requirements. Courts are liberal regarding the nature of a signature; it need only reflect an intent to authenticate the writing. Both the tenant's and the landlord's names were placed below the word "signed," which adequately reflected their desire to be bound.

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Who is likely to prevail?

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B: The landlord, because the landlord's email response did not contain a sufficient signature under the statute of frauds.
C: The tenant, because the email messages constitute an insufficient attornment of the lease.
D: The tenant, because the email messages constitute a sufficient memorandum under the statute of frauds.

The explanation for the answer is:

A is incorrect. A contract to convey the building could be made during the lease term or thereafter. The email exchange satisfied the statute of frauds, the contract was valid, and the tenant is entitled to specific performance.

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C is incorrect. Attornment is not an issue in this case, because it is the tenant who wants to purchase the property. The tenant is likely to prevail, but it is because there was a valid contract of sale. The exchange of emails satisfies the statute of frauds, because the writings identified the parties and the property, expressed an intent to buy and sell, and contained a price term and adequate signatures.

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Question 1564 - Real Property - Rights in Land

The question was:

A tenant leased a commercial property from a landlord for a 12-year term. The property included a large store and a parking lot. At the start of the lease period, the tenant took possession and with the landlord's oral consent installed counters, display cases, shelving, and special lighting. Both parties complied with all lease terms.

The lease is set to expire next month. Two weeks ago, when the landlord contacted the tenant about a possible lease renewal, she learned that the tenant had decided not to renew the lease, and that the tenant planned to remove all of the above-listed items on or before the lease termination date. The landlord claimed that all the items had become part of the real estate and had to remain on the premises. The tenant asserted his right and intention to remove all the items.

Both the lease and the statutes of the jurisdiction are silent on the matter in dispute. At the time the landlord consented and the tenant installed the items, nothing was said about the tenant's right to retain or remove the items.

The landlord has sued the tenant to enjoin his removal of the items. How is the court likely to rule?

A: For the landlord, because the items have become part of the landlord's real estate.
B: For the landlord as to items bolted or otherwise attached to the premises, and for the tenant as to items not attached to the premises other than by weight.
C: For the tenant, provided that the tenant reasonably restores the premises to the prior condition or pays for the cost of restoration.
D: For the tenant, because all of the items may be removed as trade fixtures without any obligation to restore the premises.

The explanation for the answer is:

A is incorrect. This is a commercial lease, and the tenant has been using the items in his business. Therefore, even if the items have become fixtures, they are trade fixtures, which may be removed by the tenant before the end of the lease term unless very substantial damage would be done by the removal. It is unlikely that the removal of these items will cause substantial damage; if so, however, the tenant must either restore the premises or pay the cost of restoration.

B is incorrect. This is a commercial lease, and the tenant has been using the items in his business. Therefore, even if the items have become fixtures, they are trade fixtures, which may be removed by the tenant before the end of the lease term unless very substantial damage would be done by the removal. It is unlikely that the removal of these items will cause substantial damage; if so, however, the tenant must either restore the premises or pay the cost of restoration. Whether an item is bolted or otherwise attached to the premises is only a factor in determining if it is a fixture.

C is correct. This is a commercial lease, and the tenant has been using the items in his business. Therefore, the items are trade fixtures, and the tenant may remove them before the end of the lease term unless very substantial damage would be done by the removal. It is unlikely that the removal of these items will cause substantial damage; if so, however, the tenant must either restore the premises or pay the cost of restoration.

D is incorrect. The tenant may be obligated to restore the premises. This is a commercial lease, and the tenant has been using the items in his business. Therefore, the items are trade fixtures, and the tenant may remove them before the end of the lease term unless very substantial damage would be done by the removal. It is unlikely that the removal of these items will cause substantial damage; if so, however, the tenant must either restore the premises or pay the cost of restoration.

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The lease is set to expire next month. Two weeks ago, when the landlord contacted the tenant about a possible lease renewal, she learned that the tenant had decided not to renew the lease, and that the tenant planned to remove all of the above-listed items on or before the lease termination date. The landlord claimed that all the items had become part of the real estate and had to remain on the premises. The tenant asserted his right and intention to remove all the items.

Both the lease and the statutes of the jurisdiction are silent on the matter in dispute. At the time the landlord consented and the tenant installed the items, nothing was said about the tenant's right to retain or remove the items.

The landlord has sued the tenant to enjoin his removal of the items. How is the court likely to rule?

A: For the landlord, because the items have become part of the landlord's real estate.
B: For the landlord as to items bolted or otherwise attached to the premises, and for the tenant as to items not attached to the premises other than by weight.
C: For the tenant, provided that the tenant reasonably restores the premises to the prior condition or pays for the cost of restoration.
D: For the tenant, because all of the items may be removed as trade fixtures without any obligation to restore the premises.

The explanation for the answer is:

A is incorrect. This is a commercial lease, and the tenant has been using the items in his business. Therefore, even if the items have become fixtures, they are trade fixtures, which may be removed by the tenant before the end of the lease term unless very substantial damage would be done by the removal. It is unlikely that the removal of these items will cause substantial damage; if so, however, the tenant must either restore the premises or pay the cost of restoration.

B is incorrect. This is a commercial lease, and the tenant has been using the items in his business. Therefore, even if the items have become fixtures, they are trade fixtures, which may be removed by the tenant before the end of the lease term unless very substantial damage would be done by the removal. It is unlikely that the removal of these items will cause substantial damage; if so, however, the tenant must either restore the premises or pay the cost of restoration. Whether an item is bolted or otherwise attached to the premises is only a factor in determining if it is a fixture.

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The landlord has sued the tenant to enjoin his removal of the items. How is the court likely to rule?

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A is incorrect. This is a commercial lease, and the tenant has been using the items in his business. Therefore, even if the items have become fixtures, they are trade fixtures, which may be removed by the tenant before the end of the lease term unless very substantial damage would be done by the removal. It is unlikely that the removal of these items will cause substantial damage; if so, however, the tenant must either restore the premises or pay the cost of restoration.

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The lease is set to expire next month. Two weeks ago, when the landlord contacted the tenant about a possible lease renewal, she learned that the tenant had decided not to renew the lease, and that the tenant planned to remove all of the above-listed items on or before the lease termination date. The landlord claimed that all the items had become part of the real estate and had to remain on the premises. The tenant asserted his right and intention to remove all the items.

Both the lease and the statutes of the jurisdiction are silent on the matter in dispute. At the time the landlord consented and the tenant installed the items, nothing was said about the tenant's right to retain or remove the items.

The landlord has sued the tenant to enjoin his removal of the items. How is the court likely to rule?

A: For the landlord, because the items have become part of the landlord's real estate.
B: For the landlord as to items bolted or otherwise attached to the premises, and for the tenant as to items not attached to the premises other than by weight.
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The explanation for the answer is:

A is incorrect. This is a commercial lease, and the tenant has been using the items in his business. Therefore, even if the items have become fixtures, they are trade fixtures, which may be removed by the tenant before the end of the lease term unless very substantial damage would be done by the removal. It is unlikely that the removal of these items will cause substantial damage; if so, however, the tenant must either restore the premises or pay the cost of restoration.

B is incorrect. This is a commercial lease, and the tenant has been using the items in his business. Therefore, even if the items have become fixtures, they are trade fixtures, which may be removed by the tenant before the end of the lease term unless very substantial damage would be done by the removal. It is unlikely that the removal of these items will cause substantial damage; if so, however, the tenant must either restore the premises or pay the cost of restoration. Whether an item is bolted or otherwise attached to the premises is only a factor in determining if it is a fixture.

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D is incorrect. The tenant may be obligated to restore the premises. This is a commercial lease, and the tenant has been using the items in his business. Therefore, the items are trade fixtures, and the tenant may remove them before the end of the lease term unless very substantial damage would be done by the removal. It is unlikely that the removal of these items will cause substantial damage; if so, however, the tenant must either restore the premises or pay the cost of restoration.

Question 1570 - Real Property - Titles

The question was:

For 22 years, the land records have shown a man as the owner of an 80-acre farm. The man has never physically occupied the land.

Nineteen years ago, a woman entered the farm. The character and duration of the woman's possession of the farm caused her to become the owner of the farm under the adverse possession law of the jurisdiction.

Three years ago, when the woman was not present, a neighbor took over possession of the farm. The neighbor repaired fences, put up "no trespassing" signs, and did some plowing. When the woman returned, she found the neighbor in possession of the farm. The neighbor vigorously rejected the woman's claimed right to possession and threatened force. The woman withdrew.

The woman then went to the man and told him of the history of activity on the farm. The woman orally told the man that she had been wrong to try to take his farm. She expressly waived any claim she had to the land. The man thanked her.

Last month, unsure of the effect of her conversation with the man, the woman executed a deed purporting to convey the farm to her son. The son promptly recorded the deed.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

Who now owns the farm?

A: The man, because the woman's later words and actions released title to the man.
B: The neighbor, because the neighbor succeeded to the woman's adverse possession title by privity of possession.
C: The son, because he succeeded to the woman's adverse possession title by privity of conveyance.
D: The woman, because she must bring a quiet title action to establish her title to the farm before she can convey the farm to her son.

The explanation for the answer is:

A is incorrect. The woman acquired her title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that any conveyance of real property be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man, and the woman validly conveyed the farm to her son.

B is incorrect. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The neighbor's actions may have started the statute of limitations running on his adverse possession of the farm, but he has been in possession of the farm for only three years. In addition, the neighbor was never in privity with the woman.

C is correct. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that the conveyance of the farm be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man, and the woman validly conveyed the farm to her son.

D is incorrect. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that any conveyance of real property be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man. Having established title to the farm by adverse possession, there is no requirement that the woman sue to establish title. Therefore, she could convey the farm to her son.

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For 22 years, the land records have shown a man as the owner of an 80-acre farm. The man has never physically occupied the land.

Nineteen years ago, a woman entered the farm. The character and duration of the woman's possession of the farm caused her to become the owner of the farm under the adverse possession law of the jurisdiction.

Three years ago, when the woman was not present, a neighbor took over possession of the farm. The neighbor repaired fences, put up "no trespassing" signs, and did some plowing. When the woman returned, she found the neighbor in possession of the farm. The neighbor vigorously rejected the woman's claimed right to possession and threatened force. The woman withdrew.

The woman then went to the man and told him of the history of activity on the farm. The woman orally told the man that she had been wrong to try to take his farm. She expressly waived any claim she had to the land. The man thanked her.

Last month, unsure of the effect of her conversation with the man, the woman executed a deed purporting to convey the farm to her son. The son promptly recorded the deed.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

Who now owns the farm?

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D is incorrect. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that any conveyance of real property be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man. Having established title to the farm by adverse possession, there is no requirement that the woman sue to establish title. Therefore, she could convey the farm to her son.

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B: The neighbor, because the neighbor succeeded to the woman's adverse possession title by privity of possession.
C: The son, because he succeeded to the woman's adverse possession title by privity of conveyance.
D: The woman, because she must bring a quiet title action to establish her title to the farm before she can convey the farm to her son.

The explanation for the answer is:

A is incorrect. The woman acquired her title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that any conveyance of real property be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man, and the woman validly conveyed the farm to her son.

B is incorrect. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The neighbor's actions may have started the statute of limitations running on his adverse possession of the farm, but he has been in possession of the farm for only three years. In addition, the neighbor was never in privity with the woman.

C is correct. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that the conveyance of the farm be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man, and the woman validly conveyed the farm to her son.

D is incorrect. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that any conveyance of real property be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man. Having established title to the farm by adverse possession, there is no requirement that the woman sue to establish title. Therefore, she could convey the farm to her son.

Question 1570 - Real Property - Titles

The question was:

For 22 years, the land records have shown a man as the owner of an 80-acre farm. The man has never physically occupied the land.

Nineteen years ago, a woman entered the farm. The character and duration of the woman's possession of the farm caused her to become the owner of the farm under the adverse possession law of the jurisdiction.

Three years ago, when the woman was not present, a neighbor took over possession of the farm. The neighbor repaired fences, put up "no trespassing" signs, and did some plowing. When the woman returned, she found the neighbor in possession of the farm. The neighbor vigorously rejected the woman's claimed right to possession and threatened force. The woman withdrew.

The woman then went to the man and told him of the history of activity on the farm. The woman orally told the man that she had been wrong to try to take his farm. She expressly waived any claim she had to the land. The man thanked her.

Last month, unsure of the effect of her conversation with the man, the woman executed a deed purporting to convey the farm to her son. The son promptly recorded the deed.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

Who now owns the farm?

A: The man, because the woman's later words and actions released title to the man.
B: The neighbor, because the neighbor succeeded to the woman's adverse possession title by privity of possession.
C: The son, because he succeeded to the woman's adverse possession title by privity of conveyance.
D: The woman, because she must bring a quiet title action to establish her title to the farm before she can convey the farm to her son.

The explanation for the answer is:

A is incorrect. The woman acquired her title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that any conveyance of real property be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man, and the woman validly conveyed the farm to her son.

B is incorrect. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The neighbor's actions may have started the statute of limitations running on his adverse possession of the farm, but he has been in possession of the farm for only three years. In addition, the neighbor was never in privity with the woman.

C is correct. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that the conveyance of the farm be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man, and the woman validly conveyed the farm to her son.

D is incorrect. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that any conveyance of real property be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man. Having established title to the farm by adverse possession, there is no requirement that the woman sue to establish title. Therefore, she could convey the farm to her son.

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D is incorrect. The woman acquired title to the farm by adverse possession. The woman's title was an original title and did not derive from the man's title. The statute of frauds requires that any conveyance of real property be in writing. Therefore, the woman's oral statement was insufficient to release the title to the man. Having established title to the farm by adverse possession, there is no requirement that the woman sue to establish title. Therefore, she could convey the farm to her son.

Question 1575 - Real Property - Ownership

The question was:

In the most recent deed in the chain of title to a tract of land, a man conveyed the land as follows: "To my niece and her heirs and assigns in fee simple until my niece's daughter marries, and then to my niece's daughter and her heirs and assigns in fee simple."

There is no applicable statute, and the common law Rule Against Perpetuities has not been modified in the jurisdiction.

Which of the following is the most accurate statement concerning the title to the land?

A: The niece has a life estate and the daughter has a contingent remainder.
B: The niece has a fee simple and the daughter has no interest, because after the grant of a fee simple there can be no gift over.
C: The niece has a fee simple and the daughter has no interest, because she might not marry within 21 years after the date of the deed.
D: The niece has a defeasible fee simple determinable and the daughter has an executory interest.

The explanation for the answer is:

A is incorrect. The gift to the niece was to the niece "and her heirs and assigns," thereby creating a fee estate rather than a life estate. The fee simple estate was made defeasible by the addition of the words of limitation "until my niece's daughter marries." A remainder interest may follow a life estate; however, a remainder does not follow a fee simple estate. A future interest created in a grantee following a defeasible estate is an executory interest. The executory interest in this case does not violate the Rule Against Perpetuities, because it will be known within the lifetime of the validating lives--the niece and the niece's daughter--whether the condition of marriage has occurred.

B is incorrect. The niece was given a defeasible fee simple. A limitation may be expressly attached to a fee simple estate. The express limitation attached to the grant was "until my niece's daughter marries." A future interest held by a grantee following a defeasible estate is an executory interest. The executory interest in this case does not violate the common law Rule Against Perpetuities, because it will be known within the lifetime of the validating lives--the niece and the niece's daughter--whether the condition of marriage has occurred.

C is incorrect. The niece was granted a defeasible fee simple. The express limitation was the marriage of the niece's daughter. If the limitation occurs, the estate transfers automatically to the niece's daughter. The future interest held by a grantee following a defeasible estate is an executory interest. Executory interests are subject to the common law Rule Against Perpetuities; however, the niece and the niece's daughter are both validating lives and the condition of the marriage either will or will not occur during their lifetimes. The additional 21 years after the death of all validating lives is not needed, and the rule is not violated.

D is correct. The niece has a defeasible fee simple because of the limitation placed on the estate by the words "until my niece's daughter marries." If the niece's daughter marries, the estate in the niece will end automatically and will pass to the holder of the future interest (the niece's daughter). The future interest given to the daughter, a grantee, is an executory interest. The executory interest in this case does not violate the common law Rule Against Perpetuities, because it will be known within the lifetime of the validating lives--the niece and the niece's daughter--whether the condition of marriage has occurred.

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Question 1585 - Real Property - Titles

The question was:

A businessman executed a promissory note for $200,000 to a bank, secured by a mortgage on commercial real estate owned by the businessman. The promissory note stated that the businessman was not personally liable for the mortgage debt.

One week later, a finance company obtained a judgment against the businessman for $50,000 and filed the judgment in the county where the real estate was located. At the time the judgment was filed, the finance company had no actual notice of the bank's mortgage.

Two weeks after that filing, the bank recorded its mortgage on the businessman's real estate.

The recording act of the jurisdiction provides: "Unless the same be recorded according to law, no conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice or against judgment creditors without notice."

The finance company sued to enforce its judgment lien against the businessman's real estate. The bank intervened in the action, contending that the judgment lien was a second lien on the real estate and that its mortgage was a first lien.

Is the bank's contention correct?

A: No, because the judgment lien was recorded before the mortgage, and the finance company had no actual notice of the mortgage.
B: No, because the businessman was not personally liable for the mortgage debt, and the mortgage was therefore void.
C: Yes, because a mortgage prior in time has priority over a subsequent judgment lien.
D: Yes, because the recording of a mortgage relates back to the date of execution of the mortgage note.

The explanation for the answer is:

A is correct. The judgment lien was recorded first in a jurisdiction that expressly protects judgment creditors without notice. The finance company had no actual notice of the mortgage and had no constructive notice because the mortgage was not recorded until two weeks after the judgment was filed. The bank's mortgage was not a purchase-money mortgage, which would have given it priority.

B is incorrect. The fact that the businessman was not personally liable for the mortgage debt is irrelevant and does not make the mortgage void. The judgment was recorded first in a jurisdiction that expressly protects judgment creditors without notice. The finance company had no actual notice of the mortgage and had no constructive notice because the mortgage was not recorded until two weeks after the judgment was filed. The bank's mortgage was not a purchase-money mortgage, which would have given it priority.

C is incorrect. The judgment was recorded first in a jurisdiction that expressly protects judgment creditors without notice. The finance company had no actual notice of the mortgage and had no constructive notice because the mortgage was not recorded until two weeks after the judgment was filed. The bank's mortgage was not a purchase-money mortgage, which would have given it priority. Priority is determined under these facts by the order of filing.

D is incorrect. The recording of a mortgage does not relate back to the date of execution of the mortgage note. The mortgage gives constructive notice as of the date of its recording. Therefore, at the time the judgment was recorded, the finance company had neither actual nor constructive notice of the mortgage and is protected under the jurisdiction's recording act. The bank's mortgage was not a purchase-money mortgage, which would have given it priority.

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C: Yes, because a mortgage prior in time has priority over a subsequent judgment lien.
D: Yes, because the recording of a mortgage relates back to the date of execution of the mortgage note.

The explanation for the answer is:

A is correct. The judgment lien was recorded first in a jurisdiction that expressly protects judgment creditors without notice. The finance company had no actual notice of the mortgage and had no constructive notice because the mortgage was not recorded until two weeks after the judgment was filed. The bank's mortgage was not a purchase-money mortgage, which would have given it priority.

B is incorrect. The fact that the businessman was not personally liable for the mortgage debt is irrelevant and does not make the mortgage void. The judgment was recorded first in a jurisdiction that expressly protects judgment creditors without notice. The finance company had no actual notice of the mortgage and had no constructive notice because the mortgage was not recorded until two weeks after the judgment was filed. The bank's mortgage was not a purchase-money mortgage, which would have given it priority.

C is incorrect. The judgment was recorded first in a jurisdiction that expressly protects judgment creditors without notice. The finance company had no actual notice of the mortgage and had no constructive notice because the mortgage was not recorded until two weeks after the judgment was filed. The bank's mortgage was not a purchase-money mortgage, which would have given it priority. Priority is determined under these facts by the order of filing.

D is incorrect. The recording of a mortgage does not relate back to the date of execution of the mortgage note. The mortgage gives constructive notice as of the date of its recording. Therefore, at the time the judgment was recorded, the finance company had neither actual nor constructive notice of the mortgage and is protected under the jurisdiction's recording act. The bank's mortgage was not a purchase-money mortgage, which would have given it priority.

Question 1585 - Real Property - Titles

The question was:

A businessman executed a promissory note for $200,000 to a bank, secured by a mortgage on commercial real estate owned by the businessman. The promissory note stated that the businessman was not personally liable for the mortgage debt.

One week later, a finance company obtained a judgment against the businessman for $50,000 and filed the judgment in the county where the real estate was located. At the time the judgment was filed, the finance company had no actual notice of the bank's mortgage.

Two weeks after that filing, the bank recorded its mortgage on the businessman's real estate.

The recording act of the jurisdiction provides: "Unless the same be recorded according to law, no conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice or against judgment creditors without notice."

The finance company sued to enforce its judgment lien against the businessman's real estate. The bank intervened in the action, contending that the judgment lien was a second lien on the real estate and that its mortgage was a first lien.

Is the bank's contention correct?

A: No, because the judgment lien was recorded before the mortgage, and the finance company had no actual notice of the mortgage.
B: No, because the businessman was not personally liable for the mortgage debt, and the mortgage was therefore void.
C: Yes, because a mortgage prior in time has priority over a subsequent judgment lien.
D: Yes, because the recording of a mortgage relates back to the date of execution of the mortgage note.

The explanation for the answer is:

A is correct. The judgment lien was recorded first in a jurisdiction that expressly protects judgment creditors without notice. The finance company had no actual notice of the mortgage and had no constructive notice because the mortgage was not recorded until two weeks after the judgment was filed. The bank's mortgage was not a purchase-money mortgage, which would have given it priority.

B is incorrect. The fact that the businessman was not personally liable for the mortgage debt is irrelevant and does not make the mortgage void. The judgment was recorded first in a jurisdiction that expressly protects judgment creditors without notice. The finance company had no actual notice of the mortgage and had no constructive notice because the mortgage was not recorded until two weeks after the judgment was filed. The bank's mortgage was not a purchase-money mortgage, which would have given it priority.

C is incorrect. The judgment was recorded first in a jurisdiction that expressly protects judgment creditors without notice. The finance company had no actual notice of the mortgage and had no constructive notice because the mortgage was not recorded until two weeks after the judgment was filed. The bank's mortgage was not a purchase-money mortgage, which would have given it priority. Priority is determined under these facts by the order of filing.

D is incorrect. The recording of a mortgage does not relate back to the date of execution of the mortgage note. The mortgage gives constructive notice as of the date of its recording. Therefore, at the time the judgment was recorded, the finance company had neither actual nor constructive notice of the mortgage and is protected under the jurisdiction's recording act. The bank's mortgage was not a purchase-money mortgage, which would have given it priority.

Question 1590 - Real Property - Mortgages

The question was:

A seller conveyed residential land to a buyer by a warranty deed that contained no exceptions and recited that the full consideration had been paid. To finance the purchase, the buyer borrowed 80% of the necessary funds from a bank. The seller agreed to finance 15% of the purchase price, and the buyer agreed to provide cash for the remaining 5%.

At the closing, the buyer signed a promissory note to the seller for 15% of the purchase price but did not execute a mortgage. The bank knew of the loan made by the seller and of the promissory note executed by the buyer to the seller. The buyer also signed a note to the bank, secured by a mortgage, for the 80% advanced by the bank.

The buyer has now defaulted on both loans.

There are no applicable statutes.

Which loan has priority?

A: The bank's loan, because the seller can finance a part of the purchase price only by use of an installment land contract.
B: The bank's loan, because it was secured by a purchase-money mortgage.
C: The seller's loan, because a promissory note to a seller has priority over a bank loan for residential property.
D: The seller's loan, because the bank knew that the seller had an equitable vendor's lien.

The explanation for the answer is:

A is incorrect. A seller may finance the purchase of property in a number of ways, including by an installment land contract, by securing the note with a purchase-money mortgage, or by an equitable vendor's lien. However, the seller did not secure the note with a mortgage, nor was an installment land contract used. The seller may have had an equitable vendor's lien for the unpaid purchase price, but the deed recites that the full consideration was paid. Therefore, the bank's purchase-money mortgage takes priority over the seller's unsecured loan and any implied equitable vendor's lien even if the bank knew of the vendor's lien.

B is correct. The bank has a purchase-money mortgage, because the loan proceeds were used to help purchase the land. A purchase-money mortgage, executed at the same time as the deed to the land, takes precedence over any other lien that attaches to the property. The seller's loan could also have been secured by a purchase-money mortgage, but it was not; the buyer signed an unsecured note to the seller. The seller also may have had an equitable vendor's lien for the unpaid purchase price, but the deed recites that the full consideration was paid. Therefore, the bank's purchase-money mortgage takes priority over the seller's unsecured loan and any implied equitable vendor's lien even if the bank knew of the vendor's lien.

C is incorrect. The seller's promissory note could have been secured by a mortgage, but it was not. The seller may have had an equitable vendor's lien for the unpaid purchase price, but the deed recites that the full consideration was paid. Therefore, the bank's purchase-money mortgage takes priority over the seller's unsecured loan and any implied equitable vendor's lien even if the bank knew of the vendor's lien.

D is incorrect. The seller may have had an equitable vendor's lien for the unpaid purchase price, but the deed recites that the full consideration was paid. Therefore, the bank's purchase-money mortgage takes precedence over the seller's unsecured loan as well as any implied equitable vendor's lien, and it is irrelevant that the bank knew of the vendor's lien.

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At the closing, the buyer signed a promissory note to the seller for 15% of the purchase price but did not execute a mortgage. The bank knew of the loan made by the seller and of the promissory note executed by the buyer to the seller. The buyer also signed a note to the bank, secured by a mortgage, for the 80% advanced by the bank.

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C is incorrect. The seller's promissory note could have been secured by a mortgage, but it was not. The seller may have had an equitable vendor's lien for the unpaid purchase price, but the deed recites that the full consideration was paid. Therefore, the bank's purchase-money mortgage takes priority over the seller's unsecured loan and any implied equitable vendor's lien even if the bank knew of the vendor's lien.

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Question 1599 - Real Property - Contract

The question was:

A seller and a buyer signed a contract for the sale of vacant land. The contract was silent concerning the quality of title, but the seller agreed in the contract to convey the land to the buyer by a warranty deed without any exceptions.

When the buyer conducted a title search for the land, she learned that the applicable zoning did not allow for her planned commercial use. She also discovered that there was a recorded restrictive covenant limiting the use of the land to residential use.

The buyer no longer wants to purchase the land.

Must the buyer purchase the land?

A: No, because the restrictive covenant renders the title unmarketable.
B: No, because the zoning places a cloud on the title.
C: Yes, because the buyer would receive a warranty deed without any exceptions.
D: Yes, because the contract was silent regarding the quality of the title.

The explanation for the answer is:

A is correct. Unless the contract provides to the contrary, the law will imply that the seller will provide the buyer with a marketable title on the date of closing. A marketable title is not a perfect title but is a title a court will force an unwilling buyer to purchase. A right held in the land by a third party, such as the right to enforce a restrictive covenant, renders the title unmarketable, and the buyer need not purchase the land.

B is incorrect. Although in some cases an existing violation of a zoning code may render title unmarketable, the mere existence of a zoning code does not render the title unmarketable or place a cloud on the title. Unless the contract provides to the contrary, the law will imply that the seller will provide the buyer with a marketable title on the date of closing. A right held in the land by a third party, such as the right to enforce a restrictive covenant, renders the title unmarketable, and the buyer need not purchase the land.

C is incorrect. Unless the contract provides to the contrary, the law will imply that the seller will provide the buyer with a marketable title on the date of closing. However, after a buyer accepts the deed, the doctrine of merger prevents the buyer from raising the issue of marketability of title, and the buyer's remedy regarding title issues, if any, will be based on the deed.

D is incorrect. Unless the contract provides to the contrary, the law will imply that the seller will provide the buyer with a marketable title on the date of closing. This contract was silent on the quality of title and therefore a marketable title will be implied. A marketable title is not a perfect title but is a title a court will require an unwilling buyer to purchase. A right held in the land by a third party, such as the right to enforce a restrictive covenant, renders the title unmarketable, and the buyer need not purchase the land.

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